Public Utilities

FORTNIGHTLY

July 7, 1938

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

MULTIPLY  MANY TIME

and you get

AN IMPORTANT LOAD INCREAS

AFTER the coffee is brewed, the exclusive Anyheet Control on the Silex Glass Coffee Maker keeps it warm throughout the meal. This adds anywhere from 30 to 60 minutes' current consumption every time it is used.

An *extra* 30 minutes' use—twice daily in many homes—for 365 days a year, means an important addition to load revenues. Especially when you consider the ever-increasing numbers of housewives that are turning to the Anyheet Control Silex! America's Number One glass coffee maker, both in preference and performance, Silex is *your* appliance opportunity. Backed by extensive advertising, it's easy to sell. And its superiorities are well known: Genuine Pyrex Brand Glass, guaranteed against heat breakage; "Quick Cooling" stove* that automatically times the period of infusion — assuring better tasting coffee. And Patented Silex Filter that insures clear, clean coffee free of all sediment.

Push the Silex Glass Coffee Maker for permanent upbuilding of load sales. Write for the Silex plan best suited to your needs.

Each regular Silex Glass Coffee Maker installed on your lines will add 87 KWH to your domestic load. Equipped with Anyheet Control, it will add 97 KWH!

The Silex Company, Dept. (P), Hartford, Conn.

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U.S. PAT. OFF.

Anyheet Control Silex . . . $6.9
(black trim) $7.45 (red trim). Othe
electric table models, $4.95 up
Kitchen Range Models, $2.95 up.

*BREWING COMPLETED WITHOUT REMOVING GLASS FROM ST

Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH
Contributing Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXII *July 7, 1938* NUMBER 1

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¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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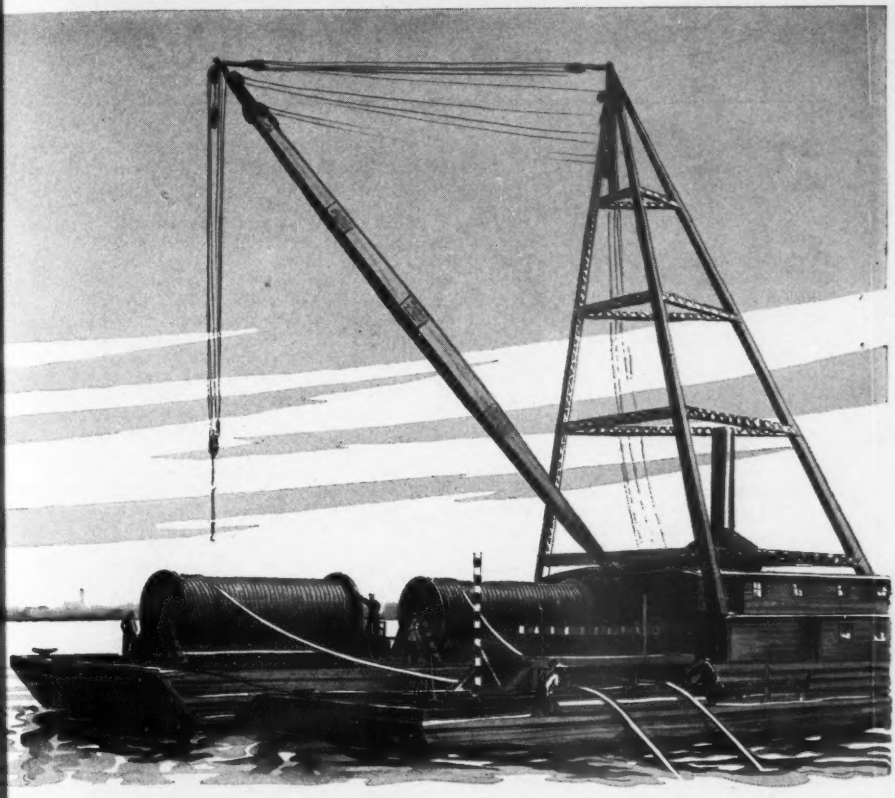


IN THE CAUSE OF BETTER SERVICE

Proper planning enables our Electric Utilities to provide their excellent service in time to meet the increasing public demand. In the same manner, the equipment manufacturers anticipate the demands of every part of the plant. This is accomplished by constant laboratory research and development of production equipment. The Okonite Company is always ready with the right kind of cable to meet new service demands. Its facilities, too, are constantly functioning in the cause of Better Service.

1938 Marks Our 60th Year of Service

THE OKONITE COMPANY

Founded 1878

EXECUTIVE OFFICE: PASSAIC, NEW JERSEY

HAZARD INSULATED WIRE WORKS DIVISION — THE OKONITE-CALLENDER CABLE CO., INC.

New York Boston Seattle Buffalo Chicago Dallas Detroit Atlanta
Philadelphia Los Angeles Pittsburgh St. Louis Washington San Francisco

OKONITE QUALITY CANNOT BE WRITTEN INTO A SPECIFICATION

Pages with the Editors

"THE governmint an' weeds," once reflected the astute Mr. Dooley of happy memory, "are two forums av' vegitable life which thrive on advarsity!"

THIS is a solemn thought as we approach the annual celebration of our national independence. It does seem, notwithstanding all the criticism, opposition, and outright indignation that have been heaped upon our governmental institutions ever since—well, ever since the very first Fourth of July in our history, the political dominion of the Federal set-up has grown bigger, more powerful, and, of course, more expensive.

THIS hardihood of government growth which may disturb the taxpayer, but which is both inevitable and necessary, as the needs of society grow daily more complex, extends especially to the regulatory arms of the government. And this is true of our state as well as the Federal government. Full state commission regulation of utilities, for example, is only an historical baby. This year it celebrates its thirty-first birthday, and for the last half-dozen years it has weathered continuous storms of criticism.

"COMMISSION regulation has failed," says one critic. "It is obsolete and will soon go the way of the dodo," says another.

BUT what are the facts? Every year, in the face of such criticism and such predictions of doom, state legislatures pass a bill *increasing* the regulatory powers of the state commissions, appropriating more money for them, and frequently placing new and different businesses under their jurisdiction.

So today the state regulatory commissions on the whole cost more than they ever did, do more work than they ever did, and have more power than they ever had. Like MR. Dooley's weeds (if the comparison be pardoned), they seem to thrive on hard knocks. There are many who still feel that public ownership will eventually gobble up the state commissions. There are others who think that the Federal government will do the gobbling. Time alone can tell. But meantime, the state commissions are still doing business at the old stand, and unlike other concerns at present, their business is very brisk.

IN the current issue we present an article on state commissions by HENRY C. SPURR, editor of PUBLIC UTILITIES FORTNIGHTLY, (beginning page 3). MR. SPURR discusses the modern relationship of our state regulatory commissions to public utility rates.

DUDLEY F. PEGRUM

California opens up her Golden Gate for utility securities—with due caution.

(SEE PAGE 22)

ANOTHER governmental infant that is growing like a mushroom is the Rural Electrification Administration, an agency of the Federal government which is barely over three years old. But it, too, has already experienced some hard knocks. A number of them have occurred in the great farm state of Nebraska. An article in this issue by H. T. DOBBINS (beginning page 16) tells about this Nebraska-REA situation. MR. DOBBINS was born in Pennsylvania in 1865; learned the printer's trade as a boy; became editor of the Lincoln (Nebraska) *Daily News,* and when that paper was consolidated with the *Nebraska State Journal* he became editor of that publication—a position which he has occupied for over thirty years.

DR. DUDLEY F. PEGRUM, whose article on California security regulation begins on page 22, was born in England in 1898, received his A. B. degree from the Canadian University of Alberta in 1922, and his M. A. degree in 1924. He began his business career in the claims department of the Canadian National Railways in 1919; went to the University of California in 1925, received his Ph. D. degree in 1927, and is now associate professor of economics at that institution. He has been a member of the faculty of the University of California since 1928. He is the author of several pub-

lished studies on utility regulation — particularly on valuation work and rates.

*

DURING the eleventh hour fuss in the recently adjourned session of Congress over the new wage-hour bill, we received an interesting letter on the national wage-hour conditions of our American kilowatt. The letter was written by one of our Baltimore readers, Joseph Sloan, who quite obviously writes what he thinks. We thought it worth reproducing, so here goes:

Dear Mr. Editor:

Not all of our unemployment problems concern human workers. There are now in the United States about one-half billion kilowatt hours a week out of jobs! These half-billion are only those who ought to be working for the private power industry. In addition, there are millions more loafing around various Federal projects. The Federal kilowatt hours are willing to work but can't find a market, so meantime they are just carried on relief rolls, so to speak.

But the private kilowatt hours are on strike. They are on strike for longer hours of employment and lower wages. They cannot economically have one without the other; and, since they cannot have both, they refuse to work for the higher wages which must be paid for smaller usage. There is only one way to end this strike. That is to give the private kilowatt hours what they demand.

The Federal government has tried to break the strike with subsidized kilowatt hours. This only drove more private kilowatt hours out on strike because their bosses became afraid to take the chance of cutting their kilowatt-hour wages low enough to satisfy their demands. If Uncle Sam would quit strike breaking with his scab kilowatt hours and give business enough encouragement to allow the idle kilowatt hours the long hour employment they need, soon all the kilowatt hours would be back on the job. And the private industry would be making more business by building more plants to make more kilowatt hours.

If the government doesn't interrupt this vicious circle of kilowatt-hour unemployment by simply doing nothing at all about it and letting private business alone, the idle kilowatt-hour situation will get worse. And if enough kilowatt hours get out of work, there won't be enough wheels left turning to make either government or business seem worth bothering about.

OF course, we hasten to add the usual admonition so frequently heard on the radio these days, that the opinions and comments expressed by Mr. Sloan are his own, etc. But he may have something there at that. It looks like a matter for the attention of Francis Biddle, who is in charge of the TVA investigation.

H. T. DOBBINS

The REA finds that Nebraska farmers are from Missouri.

(SEE PAGE 16)

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

AN order of a state commission, valid under state laws, which compels an interstate company to furnish information concerning rates and other items does not, in the opinion of the United States Supreme Court, unduly interfere with interstate commerce. (See page 337.)

IN this issue will be found the decision of the United States Supreme Court on the adequacy of a hearing before a regulatory authority (see page 339), together with the court's denial of a rehearing based on the charge that the court had reversed itself. (See page 346.)

A STATUTE requiring electric companies to furnish free light bulbs would, in the opinion of a Massachusetts court, be invalid. (See page 349.)

TAXATION of residents in a city operating a municipal plant is an item to be considered in comparing municipal and private company rates, according to the Utah commission. (See page 384.)

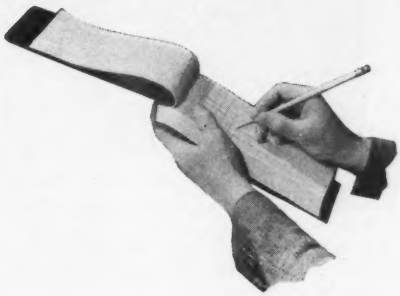
A RESTORATION charge has been held illegal under a New York statute prohibiting a service charge. (See page 393.)

THE next number of this magazine will be out July 21st.

The Editors

The Meter Reader's Book

is the KEY to Public Utility Bookkeeping



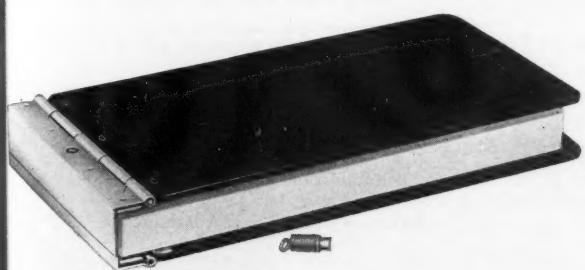
From the sheets of the Meter Reader's Book consumption figures are extended. From it figures for charging are drawn.

This is true no matter what type of bookkeeping system a public utility company employs.

The man who reads meters will not, however, keep this in mind. He will rest his book against damp cellar walls—he will smudge it—treat it carelessly. For that reason public utility companies need meter readers' books which are long wearing—shaped to fit the hand conveniently, and which provide a firm level surface for making entries.

The Baker Vawter-Kalamazoo, Division of Remington Rand, recommends, therefore, Meter Reader's Binder No. 284. High compression binding at the margin forestalls any possible loss of date in transit. Covers come in Bakelite canvas, artificial leather, aluminum or fibre. They are practically indestructible and provide protection against moisture, dirt, acid or other destructive agents encountered in places where the binders are used.

Baker Vawter-Kalamazoo, Division of Remington Rand, provides a special rack for use of those public utilities employing "the unit plan of bookkeeping".



A phone call will bring a Remington Rand Loose Leaf Specialist to your desk.

BAKER VAWTER-KALAMAZOO

Loose Leaf Division of Remington Rand

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 337—400, from 23 P.U.R.(N.S.)

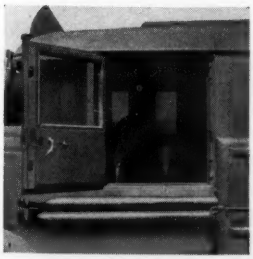
A new precedent in body design

because it is the most satisfactory and economical solution to the crew compartment problem;

because it is the safest public utility body ever designed;

because it provides more available length for the same overall dimension;

and because it has a uniformity of appearance possible only in an integral design.



Up-to-date equipment for the 4406 body includes a caboscope for viewing overhead wires, a vacuum clutch winch, and a universal swivel sheave. It is mounted on a standard 160 inch wheelbase cab-over-engine chassis. The illustration shows the emergency door which opens above the derricks.

LARGEST EXCLUSIVE MANUFACTURERS OF

STANDARD UTILITIES EQUIPMENT

FOR MOTOR VEHICLES

THE AMERICAN COACH & BODY CO.

CLEVELAND, OHIO

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

FRANCIS E. FROTHINGHAM
President, Investment Bankers Association of America.

"The free flow of capital is impossible if business is constantly threatened by the arbitrary power of government."

JAMES M. MEAD
U. S. Representative from New York.

"He [President Roosevelt] has reduced the problem of economics to its lowest common denominator and mastered it."

BRUCE BARTON
U. S. Representative from New York.

". . . the antimonopoly bill should be called the 'anti-job bill' or the 'bill for increasing unemployment.' It is not an honest measure."

WALTER M. PIERCE
U. S. Representative from Oregon.

"This [TVA] trial will rank in future history as one of the momentous trials of our civilization . . . It is in reality plutocracy *versus* democracy."

J. WILL TAYLOR
U. S. Representative from Tennessee.

"There must be a quickening of the public conscience and a restoration of confidence in the stability and integrity of government in Washington."

JOHN D. DINGELL
U. S. Representative from Michigan.

"From the very day of the establishment of civil service, every real advancement benefiting the employees and taxpayers came while the Democrats were in power."

PAUL W. GARRETT
Director of Public Relations, General Motors Corporation.

"The philosophy of public relations turns not upon the needs of industry but upon the needs of the customer. And upon what better ground could industry want to stand?"

MAURY MAVERICK
U. S. Representative from Texas.

". . . although I am a lawyer, I get fed up on the vaporings of some of my brethren, who blat and groan about the Constitution and do nothing to protect the rights of citizens under it."

THURMAN W. ARNOLD
Assistant Attorney General of the United States.

"Industrial prices fixed by monopoly control are different from taxes only in the fact that such prices are levied without public responsibility and their proceeds are used for private and not for public purposes."

LEWIS B. SCHWELLENBACH
U. S. Senator from Washington.

"There has not been a single thing done by the government; there has not been a single thing done by the present administration which to the slightest extent has hurt the investors in these [electric utility] companies."

EDITORIAL COMMENT
The New York Times.

"More important than any other aim of public policy for the radio is its preservation as a free channel of information and opinion, and the prevention of its use, as in the nations under dictatorship, as merely a huge engine of propaganda."

THOMAS F. WOODLOCK
Writing in The Wall Street Journal.

". . . no more fundamental issue could be presented to the voters in America than the integrity of the Supreme Court. That issue confronts them today and confronts them at the polls. The one great necessity of the moment is that the voters should realize that fact."

ROSS A. COLLINS
U. S. Representative from Mississippi.

"If Congress has the right to fix minimum wages it also has the right to fix maximum wages. I fear it is not safe to entrust to executive bodies and public officers the power to regulate the business life of the nation and to fix living standards for working men and women."

EMANUEL CELLER
U. S. Representative from New York.

". . . all of us love our country, but few of us can successfully sing the song we adopted as our official means of expressing our love. For the Star-Spangled Banner is beyond the reach of the average voice, shooting from a low B-flat to high F, a range of 12 notes."

CLARE E. HOFFMAN
U. S. Representative from Michigan.

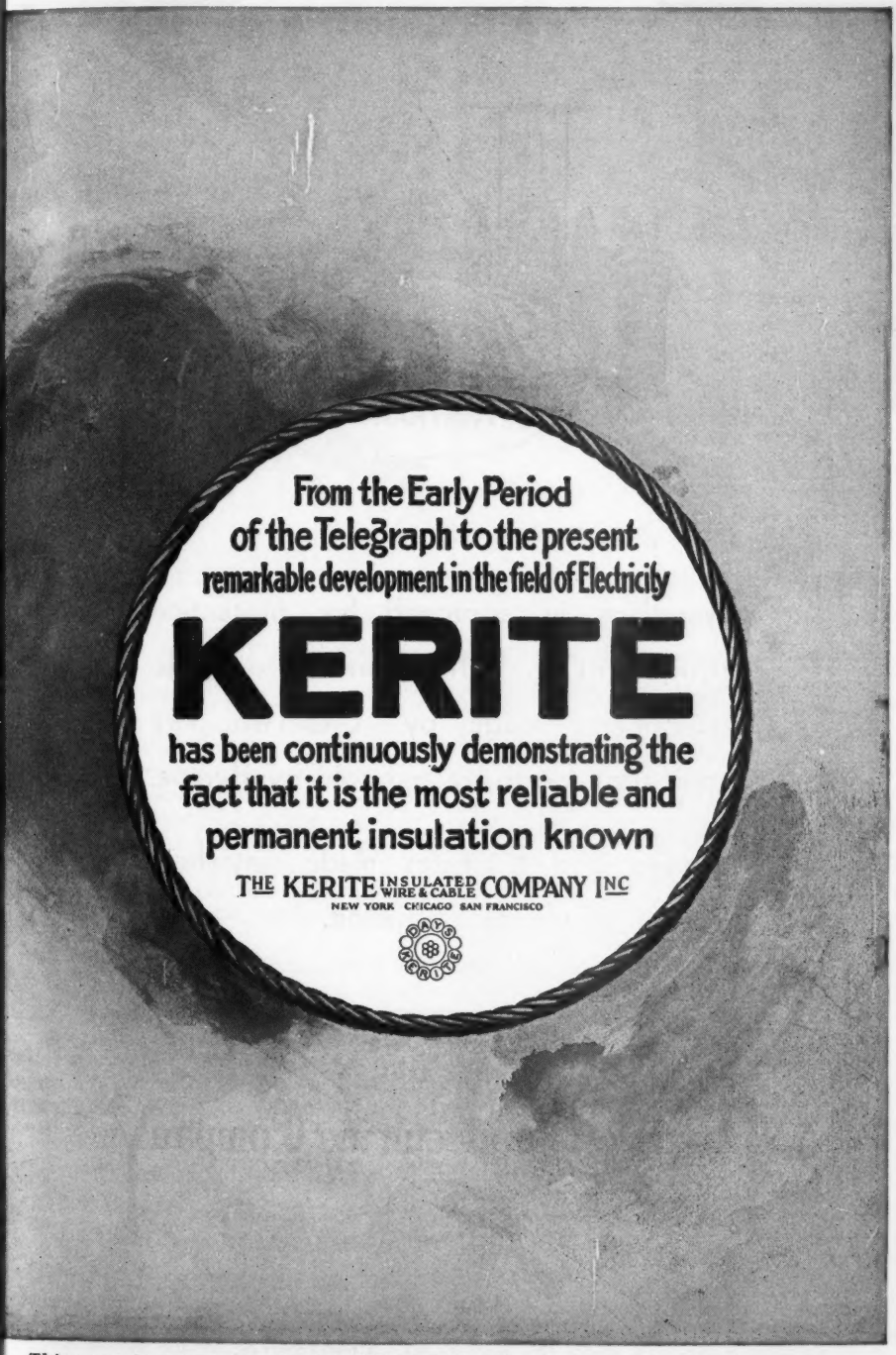
"As surely as night follows day, unless the CIO abandons its policy of coercion, intimidation, and violence; unless it recognizes that those who will not join have rights and privileges equal in degree and extent to those which it claims for its members, it will fail to survive."

HOWARD A. GRAY
Assistant Administrator, Public Works Administration.

"Throughout the length and breadth of the land we now have sewer systems, waterworks, schools, courthouses, public building, power projects, roads and highways, grade crossings, flood control, water power, and engineering structures where before none of these things existed."

JOHN J. O'CONNOR
U. S. Representative from New York.

". . . no sooner had the Communist leaders consolidated their power, than all the land which the [Russian] peasants owned, in the first instance, and in their own right, and, in the second instance, what they had confiscated from the large landowners, was expropriated by the all-powerful Communist state."



These interesting FACTS about VALVES re worth "jotting down" in your memory

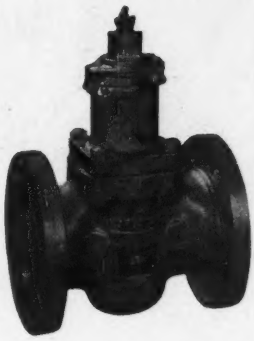
NORDSTROM *manufactures more than* 1,000 *different sizes and variations of lubricated plug valves, for use in Gas, Petroleum, Refining, Chemical and other Industries. There is a size and type of Nordstrom Valve to meet every major valve need, in lines ranging from ½" to 30".*

TED AND WORKING PRESSURES

Every Nordstrom Valve receives a hydrostatic Test of at least 100% in excess of its rated pressure. They are subjected to drastic tests to insure against porosity, line leakage, and for working strength. Valves available in rated pressures of up to 10,000 lbs., working pressures of up to 5,000 lbs.

AND 4-WAY

Nordstrom Multi- Valves offer unusually efficient type of multi- valve due to patented lubri- seal which prevents leakage between ports.



150 DEGREES BELOW ZERO

The above photo shows a recent Nordstrom development—a valve of special metal for use in a refinery operating certain lines at —150° F. A long shank provides area for encasing the valve with insulation.

FOR VACUUM SERVICE

Nordstroms are as efficient in holding vacuum lines as for high pressures. The barrier of "Sealdport" lubrication prevents inward leakage.

NORDSTROM AIR COCKS

The slightest leak in an air line costs money. For services such as underground air service, shop air line outlets, etc., requiring smooth throttling, use Nordstrom Lubricated Air Cocks, Type W. Sizes ½", ¾", 1". Saves hours every month.

FREQUENT TURNING SERVICE

If you have any lines on which valves must be turned every few minutes, such as water, steam or air lines, the time consumed to turn a globe, gate or spring valve is time wasted. A Nordstrom, with only quarter-turn is instant service.

NARROW GATE DIMENSION TYPE

When you desire to replace your old gate valves with Nordstroms, you can install the Emco - Nordstrom Type without changing piping. These have the same face-to-face dimensions as gate valves.

VALVE LOCKING DEVICES

Locking devices are available. Valves can be locked or sealed either open or closed. Desirable on tanks. The device encloses the cover and gland of the valve, preventing tampering.

ELECTRICAL REMOTE CONTROL

Electric motor operating units can be furnished for large Nordstroms, for remote control. Also, valves may be equipped with fluid cylinders for operation by means of air, gas, steam, oil or water.

ALLOY METALS

Nordstroms are offered in all approved alloy metals for special services.

Ask for Bulletins

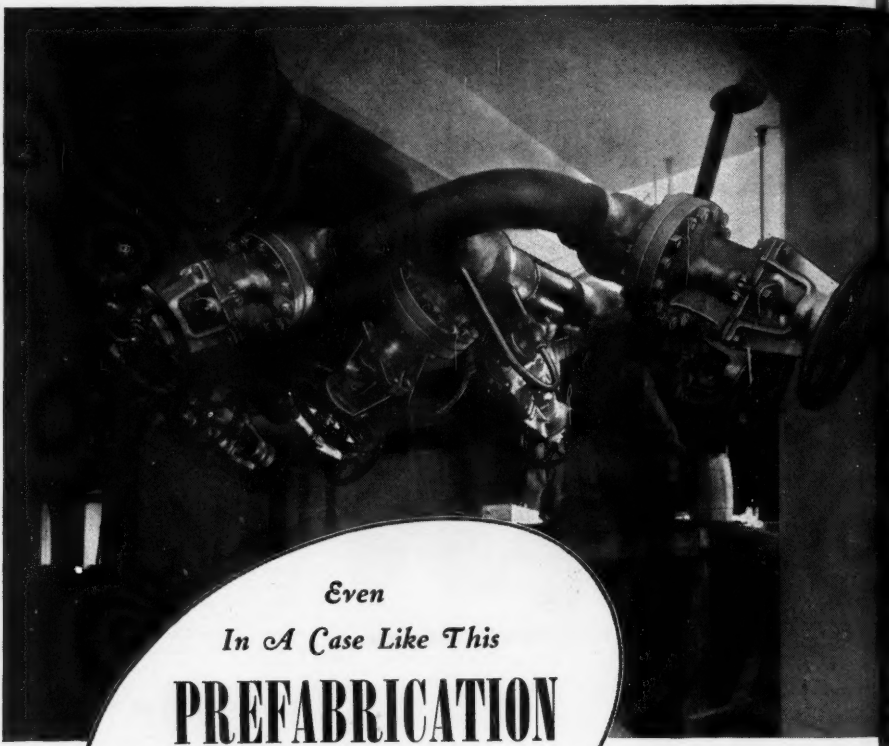
NORDSTROM VALVES

PATENTED "Sealdport" LUBRICATION

UCTS—NORDSTROM VALVES; EMCO GAS METERS and REGULATORS; PITTSBURGH LIQUID METERS.

RCO NORDSTROM VALVE CO. *A Subsidiary* of PITTSBURGH EQUITABLE METER CO.

Office: Pittsburgh, Pa. *Branch Offices*: New York City, Buffalo, Philadelphia, Columbia, Memphis, Chicago, as City, Des Moines, Tulsa, Houston, Los Angeles, Oakland. *Canadian Licensees*: Peacock Brothers, Ltd., real. *European Licensees*: Audley Engineering Co., Ltd., Newport, Shropshire, England.



Even

In A Case Like This

PREFABRICATION

Plays Its Part

SEND FOR THE PICTURE-STORY

"Grinnell Prefabricated Piping"—scores of photographs of Grinnell prefabrication facilities and power and process installations.

The compactness that locates this group of big gate valves close together can be provided in only one way . . . . by carefully engineered, prefabricated sub-assemblies, welded into a finished unit.

Back of this complicated piping installation lie engineers' ideas and plans, interpreted by Grinnell . . . . plant facilities that provided the sub-assemblies to accurate dimensions, in the proper material, on Grinnell's unfailing schedule . . . . welders whose work qualifies for insurance . . . . all reasons why engineers faced with routine or unusual piping jobs are saying, "Give the plans to Grinnell." Grinnell Co., Inc., Executive Offices, Providence, R. I. Branch offices in principal cities of the U. S. and Canada.

PREFABRICATION BY GRINNELL

WHENEVER PIPING IS INVOLVED

SAVE $7 per thousand (and more) in writing all Utility Forms with the

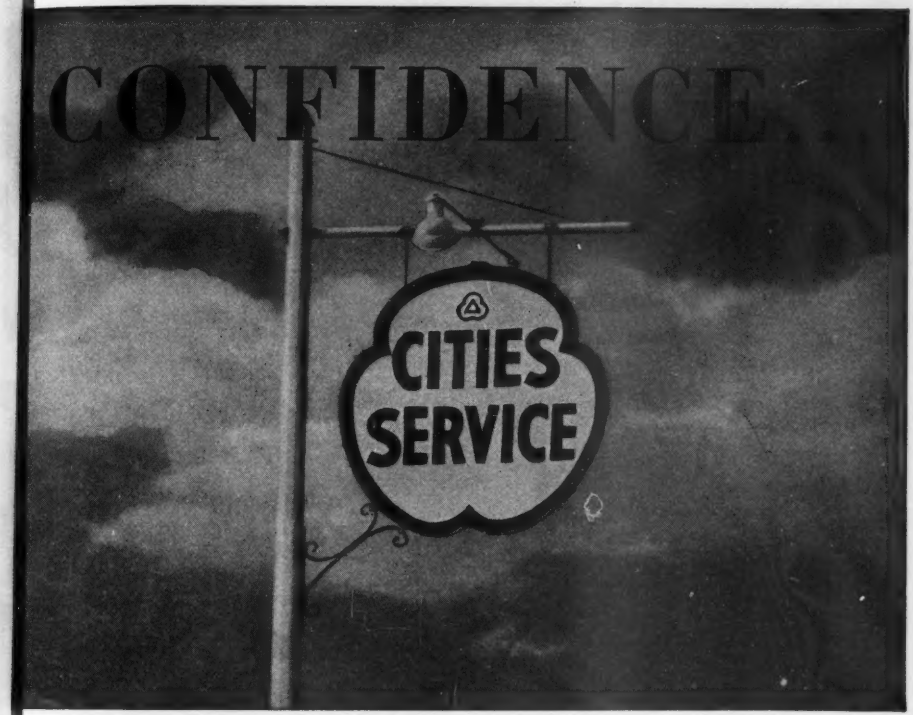
EGRY SPEED-FEED

Requires no change in typewriter construction or operation

e Speed-Feed wipes out the wasteful, time-con-ming, red ink operations necessary in manually erleaving carbons and loose forms, preparing them typing and removing the carbons after rms are typed; non-productive work that sts approximately $7.00 per thousand sets a six part form. Multiply this by the mber of forms you use and you have but a rt of the Speed-Feed savings!

automatically inserting and removing bons, the Egry Speed-Feed makes all the erator's time productive, increasing the put of typed forms per day % or more. Eliminates the of costly, pre-inserted, e-time carbons, loose forms d carbons and other out-ed methods; keeps all pies in the set in perfect gnment; instantly attached detached without the use tools. Yet, with all its ad-tages and economies, the Speed-Feed costs s than 2c per day for only one year! vestigate this indispensable Egry business aid. Literature will be sent on request. Demonstrations arranged without cost or obligation. Address Dept. F-77.

The EGRY REGISTER Company
Dayton, Ohio
SALES AGENCIES IN ALL PRINCIPAL CITIES



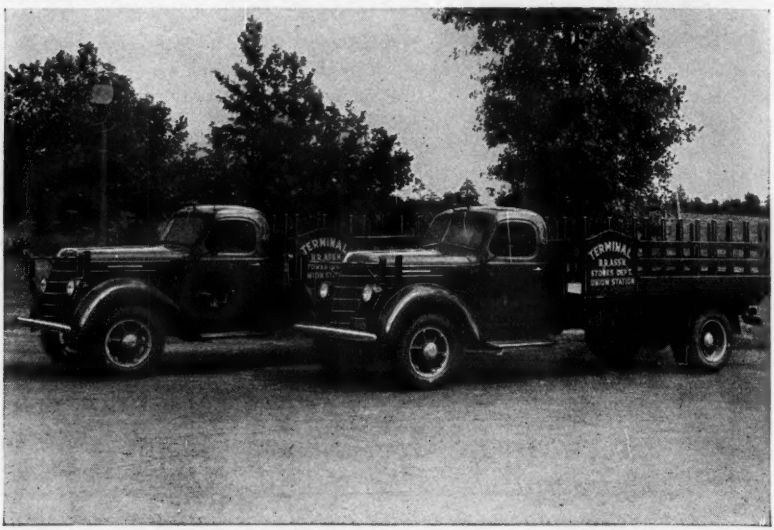
Whether You Buy A Tankful Of Gasolene Or A Carload Of Oil—You Can Be Sure That CITIES SERVICE PRODUCTS *Are Unsurpassed!*

THE QUALITY of Cities Service gasolenes, oils and greases is guarded every step of the way from the oil well to you. For Cities Service is a completely integrated unit in the oil industry, engaged in all phases of petroleum operation... production, transportation and refining. The finished products, backed by 74 years of refining experience, reach you through 15,000 reliable outlets. The Cities Service emblem is your guarantee of dependable products and efficient, courteous service.

CITIES SERVICE 

Serves A Nation!

These Trucks Keep Old Friend ... Make New Friends *Every Da*



The Stores Department of the Terminal R. R. Association, St. Louis, keeps these 1½ to 2-ton International Trucks busy

When the driver comes in off a run and says, "Man, *there's a truck!*"—then you know what it means to make friends with one of these International Trucks. Friendships between owners and their Internationals have always been based on the highest type of performance and the lowest cost per ton or mile.

★ ★ ★ ★

International Harvester has been in the truck business for a long time . . . more than thirty years. During these years there have been many changes in the truck industry. One of the most significant changes is the steady ma of International Trucks up through ranks to their present strong positio

This substantial progress is the result the sound, solid policies that guide business. For example, we bu TRUCKS for TRUCK WORK, and g them the full backing of our nati wide service organization. And we bu such a wide range of models—25 mod in 81 wheelbases—that you can alw choose an International Truck that your job. See these trucks at the nea International dealer or Company-ow branch showroom.

INTERNATIONAL HARVESTER COMPANY
(Incorporated)
180 North Michigan Avenue, Chicago, Illinois

INTERNATIONAL HARVESTE

How to Save Make-up and Boost Turbine Hours

Over half the power generated for industry in America comes from turbines using Gargoyle D.T.E. Oil Light. Socony-Vacuum's experience with over 9,000 turbines helps find operating economies

FOR LENGTH OF SERVICE and turbine hours per gallon of "make-up," no turbine oils measure up to Gargoyle D.T.E. Oil Light. That is why more than half the country's turbines rated 5000 kw. and over use them exclusively. This wealth of turbine operating experience Socony-Vacuum places at the disposal of your men.

Socony-Vacuum has "kept cases" on turbine operation. This experience is made available without cost to turbine men. Pamphlets prepared on this subject will be sent at your request. In addition, see the new movie called "The Inside Story," which reveals exactly what Correct Lubrication does. Just write to the nearest Socony Vacuum office for these aids.

"72 Years of Experience Calling"

That is what the chief of a great utility wrote to one of his station superintendents. For when the Socony-Vacuum Representative calls on you, he brings to your problems the greatest experience in the oil business. Many operators find this experience helps them to chalk up records for efficiency and economy. Why not make sure to see if our man has something you can turn to your advantage?

SOCONY-VACUUM
OIL COMPANY, INCORPORATED
STANDARD OIL OF NEW YORK DIVISION · WHITE STAR DIVISION · LUBRITE DIVISION · MAGNOLIA PETROLEUM COMPANY
CHICAGO DIVISION · WHITE EAGLE DIVISION · WADHAMS OIL COMPANY · GENERAL PETROLEUM CORPORATION OF CALIFORNIA

GARGOYLE Lubricants

MAKERS OF MOBILGAS, MOBILOIL, GARGOYLE INDUSTRIAL LUBRICANTS

The PITTCO STORE FRONT CARAVAN *Returns!*

Another chance to tie up with this potent builder of new lighting customers! Another opportunity to sell more current by showing the merchants and property-owners in your territory the advantages of modern, business-building store front lighting and design.

The Pittco Store Front Caravan, with twelve scale models of modern, properly illuminated store fronts, is going to cover the entire country *again*. If it visited your territory on its first trip, you'll know how helpful it was to you in educating your prospects to a better appreciation of adequate store front illumination.

This time, the Caravan will cover your territory more broadly than before. Having presented its store front exhibit in all the metropolitan areas on its previous tour, it will this time present showings of its scale models in the more important *smaller* communities throughout your territory . . . giving every merchant and every property owner a chance to see it.

Watch for the return of the Pittco Caravan . . . and tie up with it in your sales efforts. Your nearest Pittsburgh Plate Glass Co. branch can give you specific information as to when it will revisit you.

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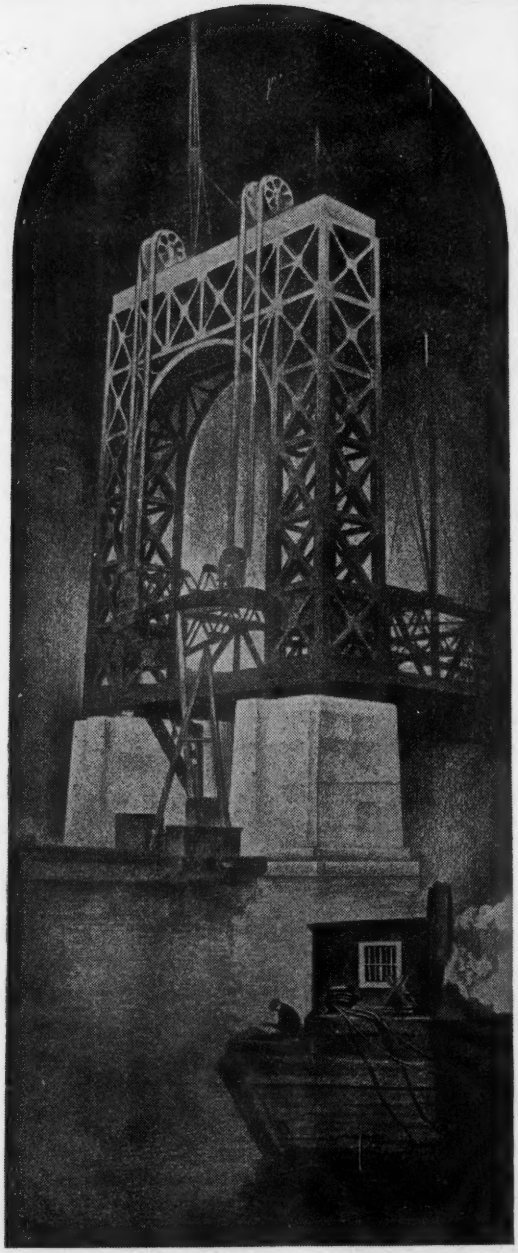
Utilities Almanack

JULY

7	Th	¶ *Michigan Gas Association ends convention, Mackinac Island, Mich., 1938.* ¶ *California Independent Telephone Asso. ends session, Santa Monica, Calif., 1938.*
8	F	¶ *American Bar Association will hold annual meeting, Cleveland, Ohio, July 25-29, 1938.*
9	Sa	¶ *Michigan Independent Telephone Association will hold convention, Lansing, Mich., July 27, 28, 1938.*
10	S	¶ *West Virginia Oil and Natural Gas Association will convene for session, Charleston, W. Va., July 27, 28, 1938.*
11	M	¶ *American Water Works Association, Central States Section, will hold convention, Wheeling, W. Va., August 17-19, 1938*
12	Tu	¶ *World Power Conference will hold sectional meeting, Vienna, Austria, August 25-September 2, 1938.*
13	W	¶ *Illuminating Engineering Society will hold annual convention, Minneapolis, Minn.. August 29—September 1, 1938.*
14	Th	¶ *National Association of Power Engineers will hold Power Show and Mechanical Exposition, Grand Rapids, Mich., August 29—September 3, 1938.*
15	F	¶ *Pacific Coast Gas Association will hold annual convention, Santa Barbara, Calif., September 14-16, 1938.*
16	Sa	¶ *Governmental Research Association will hold meeting, Princeton, N. J., September 7-10, 1938.*
17	S	¶ *Iron & Steel Exposition will be held, Cleveland, Ohio, September 27-30, 1938.*
18	M	¶ *American Communications Association opens national convention, New York, N. Y., 1938.*
19	Tu	¶ *American Transit Association will hold annual convention, Toronto, Canada, October 3-6, 1938.*
20	W	¶ *American Society of Civil Engineers starts annual meeting, Salt Lake City, Utah, 1938.*



Bridge under Construction

Mural sketch for the main post-office building, New York, N. Y.

By Louis Lozowick

Public Utilities
FORTNIGHTLY

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The State Commissions and Public Utility Rates

Continued savings to customers through reductions in charges put into effect during 1937

BY HENRY C. SPURR

SOME years ago when there was a popular political attack on state commission regulation of public utilities, the charge was frequently made that it had failed; that the commissions were not functioning as intended; and that nothing worth while was in fact being accomplished for the benefit of the public.

The critics were thinking solely about public utility rates. Agitation against utility rates, alleged to have been excessive, was popular long before the commissions were set up. After a decade or more of commission regulation, it was itself attacked for alleged shortcomings of the commissions in their regulation of rates. The assumption was that the success or failure of commission regulation was to be measured wholly by the rate-reduction yardstick. The reasoning was scholastic and theoretical. The courts of the country, following the lead of the Supreme Court of the United States, were said to have made effective regulation—*meaning rate reductions*—practically impossible because

of the judicial rule that public utilities are entitled to a fair return on the present value of their property rather than on the prudent investment in it. That was the heavy artillery brought to bear on the general theory of commission regulation. In addition, the commissions themselves were occasionally bombed for their supposed failure to make the most of their opportunities in the matter of rate reductions.

The impression left on the public as the result of this campaign against commission regulation might easily have been that the whole theory was, in practice, a fizzle, either because of the asserted court interference, because of the lack of appreciation by the commissions themselves of their public duty, or because of the failure of the state legislatures properly to finance them. Some of the critics in fact went so far as to say that the public received no benefit whatsoever from commission regulation and that the commissions therefore ought to be abolished.

WHILE the forcing of rate reductions is not the sole or indeed the most important function of the state commissions, nevertheless PUBLIC UTILITIES FORTNIGHTLY as far back as 1929 produced figures to show that, even measured by the yardstick of rate reductions, the record of the commissions from the public's standpoint had been an impressive one. At that time, for example, the California commission, which had been under attack by unfriendly critics, had made rate reductions for the year amounting to a saving of $3,500,000 for ratepayers and had returned $7 to the ratepayers through rate reductions brought about by the commission, for every dollar of expense incurred by the commission. That did not look as if the Californians were throwing away money on their commission. Commissions in other states under attack were likewise ordering substantial rate reductions.

Since that time, year after year, the state commissions have been ordering rate reductions or securing them by negotiations based on reports and statistics in their files. The amounts of estimated savings to ratepayers through these reductions running into many millions of dollars have been published from time to time. These reductions have been brought about in spite of all of the alleged commission handicaps and are a convincing answer to the extravagant charge occasionally made even now—that a state commission regulation of public utilities is futile.

It is probable that the utility companies have not always regarded these reductions with equanimity, but certainly the ratepayers should, as they have benefited substantially from commission action.

While it would seem that the commissions must be approaching the dead line of rate reductions, owing to increasing labor and other operating costs and to the growing load of taxation imposed upon utility service, nevertheless the commissions continued their rate reductions during 1937 as the following records show:

THE Alabama Public Service Commission estimates the savings to consumers of that state through rate reductions for the fiscal year 1936-1937 to be as follows: Electric, $521,182; gas, $23,235; water, $8,080; telephone, $101,655, making a total of

$654,152. Additional reductions were ordered between October 1 and December 1, 1937, but they were few and of small amount and probably totaled less than $5,000.

The Arizona Corporation Commission was active in rate reductions for utility service during the year 1937. Its records show reductions for the various utility companies in the towns where the service is rendered. The total savings by the 1937 rate reductions were: Electric, $377,548; water, $16,-370; gas, $37,251. This makes a total of $431,169 for the year.

The following statement gives the estimated savings to customers in California through the action of the railroad commission during the year 1937 covering electric, gas, telephone, telegraph, and water utilities. The figures follow:

Class of Service	*Number of Companies*	*Net Total Reductions*
Electric	16	$4,455,294
Gas	9	1,533,963
Telephone & Telegraph	18	1,126,958
Water	15	139,682
Total	58	$7,255,897

The commission's policy has been to handle these rate reductions through informal negotiations based upon comprehensive studies by members of the commission's staffs. Early this year an agreement was reached with the Pacific Gas and Electric Company covering a reduction of approximately $2,000,000 in the natural gas service charges. This adjustment became effective April 1st. In announcing this latter reduction to the public it was stated that the commission regarded it as entirely just and fair although the company, while agreeing to accept the commission's conclusions, felt that the reduction was larger than was justified in view of existing economic conditions and prospective increases in operating expenses and taxes. The reduction resulted from a 6-month investigation by members of the commission's staff.

The savings, it is stated, will be largely divided between the utility's 500,000 domestic and commercial customers in northern and central California.

ILLINOIS RATE REDUCTIONS

Utility and Class of Service	*Reductions*	*Increases*	*Net*
Electric—Total	$1,926,221	....	$1,926,221
Residential	718,753	....	718,753
Small power and light	637,260	....	637,260
Large power and light	463,632	....	463,632
Municipal	98,250	....	98,250
Rural	8,326	....	8,326
Gas—Total	257,300	650	256,650
Domestic	216,063	....	216,063
Commercial	2,000	....	2,000
Industrial	39,237	650	38,587
Telephone	6,152	1,124	5,028
Water	71,285	150	71,135
Heating	.....	....	.....
Total	$2,260,958	$1,924	$2,259,034

In Colorado during 1937 there were 121 rate changes made, 113 being electric, 4 gas, 1 telephone, and 3 telegraph. All of these changes resulted in reductions either in the unit charge or modification of the rate terms. The estimated electric rate reduction amounted to $139,700; gas to $2,000; telephone to $7,650. While there is no measure to be had of telegraph rate reductions, the total estimated saving in the state for the year amounted to $149,350. During the year the commission did not order rate reductions in formal matters before it but appreciable credit is due the commission for its activities in the matter of the rates of various utilities throughout the year. Many rate matters were adjusted by mutual agreement between the utilities and the customers negotiating through the commission, the commission's staff assisting both of the interested parties in the solution of their rate problems, thus obviating any necessity of extensive investigations, appraisals, and rate hearings.

The Connecticut Public Utilities Commission has made no study or analysis of the effect of the savings resulting from the reductions in utility rates generally but has made such study or analysis with respect to reductions in electric rates. Although no formal electric rate cases were before the commission for consideration during 1937, a considerable reduction in the rates for the several classes of users was brought about by the commission through informal conferences, negotiation, and prodding. The total aggregate reductions for the 12-month period ending September 30, 1937, has resulted in annual savings for all classes of customers of $710,104. It may be of interest in this connection to know that electri rate reductions made during the pre ceding five calendar years, 1932-193 resulted in a saving to all classes o users, computed on an annual basis fo the 5-year period, of $3,376,305 These savings have all been estimate on the basis of the volume of consump tion at the time the reductions becam effective and do not include savings re sulting from increased consumption.

The estimated saving from rate re visions reported by the Georgia Publi Service Commission for 1937 amount to $756,435. In June, 1937, rate R- of the Georgia Power Company, new wholesale rate applicable to rura coöperative organizations, represente a very substantial rate reduction t those organizations, although it is im possible to evaluate the reduction sinc the rate was fixed prior to the initia establishment of service to the coöp eratives.

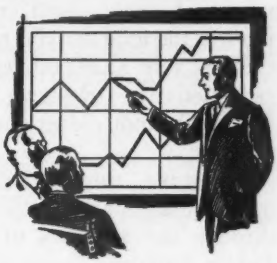
The rate reductions by the Idah Public Utilities Commission were i the following amounts: Telegrap companies, $2,500; telephone com panies, $5,000; electrical companies $210,280; railroads, $4,500; or a tota of $222,280.

The table on page 5 shows a break down of the savings due to rat revisions ordered by the Illinois Com merce Commission during the calenda year 1937, the data being estimates o the effect per annum on operating revenue as the result of revisions i public utility rate levels.

This summary of savings effected by rate reductions does not includ statewide reductions in the rates of th Illinois Bell Telephone Company fo the reason that the revisions in these

Downward Trend of Rates under Commission Regulation

". . . year after year, the state commissions have been ordering rate reductions or securing them by negotiations based on reports and statistics in their files. . . . These reductions have been brought about in spite of all of the alleged commission handicaps and are a convincing answer to the extravagant charge occasionally made even now—that a state commission regulation of public utilities is futile."



tes did not become effective for billg purposes until January 1, 1938. It estimated that this reduction in telehone rates will save subscribers in linois approximately $2,650,000 per ear.

A net annual recurring saving of pproximately $401,400 to the users f electricity, gas, and telephone is timated by Chairman Ernest E. lincoe of the Kansas State Corpoation Commission. These rate reducons were secured in many instances rough conferences and at a minimum ost to the users of the service. They volved 165 different filings of rates. f the total savings $345,000 resulted rom reductions in electric rates and he sum of $56,000 from reductions gas rates.

The estimated savings from rate reuctions ordered by the Kentucky ublic Service Commission for 1937 mounted to $1,343,106. This saving as effected by reductions in electric, as, water, and telephone rates. There ere 675 towns interested in this reuction and 302,673 customers afected. The table outlined on page 9 ives the details.

THE Indiana Public Service Commission reports that rate reductions ordered by the commission for 1937 totaled $930,427.29 and that the total voluntary reductions amounted to $349,188, or a grand total of $1,279,615.29. The total amount of electric rate reductions amounted to $857,156.03. Of this amount $328,477.06 was due to voluntary reductions and $528,678.97 to reductions ordered.

The total reductions in residential rates amounted to $529,169.27; commercial rates to $75,370.14; industrial rates to $167,573.85; municipal usage, $44,205.71; and wholesale rates to other utilities to $40,837.06.

The total amount of reductions in gas rates amounted to $413,349.26, of which amount $11,600.94 was voluntary, and $401,748.32 ordered by the commission. Of this amount $285,655.37 benefited residential consumers; $55,429.89, commercial consumers; $71,079.06, industrial consumers; $987, municipal users; and $197.94, other utility consumers.

Reductions in water rates amounted to $6,860, and telephone rates to $2,250, all voluntary.

The records of the Louisiana Public Service Commission show that for the calendar year of 1937 the commission brought about reductions in rates to the total amount of $451,930. Of this sum $328,000 resulted from reductions in telephone rates and $123,930 from reductions in electric rates.

Extensive rate reductions were made during the years 1936 and 1937 through the activities of the Maine Public Utilities Commission. There are fifty electric utilities in Maine serving a total of 202,074 residential customers. The size of these utilities varies greatly, the smallest having only 11 residential customers. The largest one has 81,959. Frank E. Southard of Augusta was appointed chairman of the commission December 28, 1935, and with the assistance of Electrical Engineer Harold L. Gerrish, started a series of conferences with the electric utilities in order to secure rate reductions. The conferences were entirely voluntary and 26 companies made reductions. The total amount of these reductions is estimated at $452,100, affecting 187,847 customers out of a total of 202,074. Of this reduction approximately $120,000 goes to commercial users. The balance of the $452,100 goes to residential users. It should be mentioned that prior to January 1, 1936, the Bangor Hydro-Electric Company made reductions in rates totaling $165,600.

IN 1937 the Michigan Public Utilities Commission ordered reductions in electric rates aggregating a saving of approximately $100,000 to customers in numerous communities throughout the state. Effective January 1, 1938, the extra charge for hand set and desk-set telephones was elim nated by order of the commissio which, it is estimated, will result in saving of approximately $325,000 t telephone subscribers. It might b mentioned that these reductions fo lowed on the heels of rate chang ordered in 1936 effecting annual sa ings of approximately $1,500,000 t telephone subscribers and $1,500,00 to electric customers.

The estimated annual saving t Maryland users of public utility ser ice through rate reductions brough about by the public service commissio during 1937 is estimated at $617,83 This includes reductions arrived a through the conference method.

The Massachusetts Department Public Utilities reports rate reductio for the year as follows:

> By order of the department or throu the commendable coöperation of officials companies with the commission, after ma conferences, reductions in the rates a charges of 35 electric companies have be made during the fiscal year, with annu savings to customers estimated as follow Domestic customers, $964,659; commerci customers, $845,469; power and stre lighting customers, $432,058; total $2,242 186. In addition the rates and charges 11 gas companies have been reduced du ing the year with estimated annual savin to customers amounting to $57,663.

The savings resulting from rate re ductions as reported by the Missou Public Service Commission for th year were as follows: electric, $1,292 517.89; water, $5,790.49; telephon $49,725. All changes in rates were re ductions. There were no changes i gas or steam-heating service rates.

The Montana Board of Railroa Commissioners estimates that the sav ings through rate reductions in th state in 1937 amounted to $125,000.

The records of the New Hampshir

ublic Service Commission show re-uctions in electric rates from January t for the year 1937 amounting to 2,197.87; gas, $5,424; telephone, 3,500.

DURING 1937 a total of 67 new and revised rate schedules were filed ith the New Jersey Board of Public tility Commissioners by electric, gas, lephone, telegraph, and water com-anies, and were permitted by the ard to go into effect. In no instance as there a rate increase. Fourteen hedules providing for downward ad-stments were filed by electric utili-es. The largest number of new hedules, 29, was filed by telephone ilities. On the basis of the volume f business existing during the twelve onths preceding the filing of revised te schedules, the estimated annual vings to consumers are as follows: ectric, $2,129,032; telephone, $472,-64; gas, $24,677; water, $4,500. Ef-ctive in 1937, public service, electric, d gas companies made reductions in ectric rates resulting in annual sav-gs of $1,503,400. This does not in-ude a reduction amounting to $1,-50,000, which was effective January 1938.

The New Jersey Bell Telephone ompany made reductions during the ar resulting in annual savings of 456,000. As pointed out by the commission, the reductions secured during a given year are not an adequate measure of the savings which have accrued to consumers through rate reductions. For example, the amounts by which the annual cost of electric, gas, telephone, and water service was less on December 31, 1937, than would have been the case if the rate schedules in effect January 1, 1928, had remained unchanged, are shown in the following table:

Type of Utility	*Amounts of Reductions*
Electric:	
Public Service Electric & Gas Co.	$11,713,000
Other electric utilities	3,988,000
Total electric service	$15,701,000
Gas:	
Public Service Electric & Gas Co.	$ 1,716,000
Other gas utilities	732,000
Total gas service	$ 2,448,000
Telephone:	
New Jersey Bell Telephone Co.	$ 1,807,000
Other telephone utilities	19,000
Total telephone service	$ 1,826,000
Water utilities	$ 98,000
Total	$20,073,000

As stated by the commission, the savings resulting from lower rate schedules are actually considerably in excess of the indicated amounts because of the larger volume of sales in 1937 than ten years previously. More than three-quarters of the total amounts of reductions have been in

KENTUCKY REDUCTIONS JANUARY 1 TO DECEMBER 10, 1937

	Am't of Reduction	*Towns Affected*	*Customers Affected*
Electric	$726,744.00	441	169,681
Gas	29,516.00	6	7,387
Water	3,908.00	1	1,714
Telephone	582,938.00	227	123,891
	$1,343,106.00	675	302,673

rates for electric service. Other utility rates are declining less rapidly, principally for the reason that the markets for the other utility services are not expanding so steadily. The accumulated savings realized over the entire period from these rate reductions have been nearly $90,000,000. These accumulated savings will continue to increase at the rate of $20,000,000 annually, plus the effect of additional rate reductions taking place from year to year. An estimate of these savings by utilities is set forth in the following table:

Type of Utility	*Cumulated Savings*
Electric:	
Public Service Electric & Gas Co.	$51,985,000
Other electric utilities	18,430,000
Total electric service	$70,415,000
Gas:	
Public Service Electric & Gas Co.	$ 7,968,000
Other gas utilities	3,383,000
Total gas service	$11,351,000
Telephone:	
New Jersey Bell Telephone Co.	$ 7,434,000
Other telephone utilities	24,000
Total telephone service	$ 7,458,000
Water utilities	$ 235,000
Total	$89,459,000

THE annual report of the New York Public Service Commission for 1937 states that under new rates for gas, electricity, telephones, water, and steam, which became effective during that year, the bills of utility consumers were reduced $10,866,000 for the same service. This exceeded the reductions made in any preceding year except 1935. The total for 1937 shown in the report includes only reductions which became effective during 1937. In addition reductions totaling over $1,000,000 were on file, to become effective early in 1938. During 1937 r funds were also made totaling ap proximately $2,235,000, representin reductions ordered by the commissio in previous years which had been hel up by court orders and which becam effective upon conclusion of the lit gation. These reductions were not in cluded in the figures for 1937.

The table outlined on page 13 is i teresting as showing reductions fro 1931 to 1937, inclusive.

The total of $55,228,000 shown i this table is based on computation which reflect the amount of busine done prior to the date that each redu tion was made, in some cases sever months prior thereto. Says the com mission:

> It is clear that, using the business do during 1937 and comparing the amount th would be charged for such business at rat in effect December 31, 1937, as compar with those in effect on January 1, 1931, the would be shown savings to consumers w in excess of $60,000,000 per year. The cum lative effect of savings to consumers ov the 7-year period, 1932-1938, will be appro mately $200,000,000, disregarding the i creased consumption due to reduced rat and the saving thereon.

The figures given relate only to rat under the jurisdiction of the commi sion. No rate reductions were includ in the first three columns of the tab unless there was an obvious or dire connection between the work of t commission and the reduction in rat How far the reductions mark "voluntary" were affected or acc erated by commission action is n known.

RATE reductions ordered by t North Dakota Board of Ra road Commissioners, together wi reductions voluntarily filed by t utility companies, amount to $185,4

Rate Reduction Not the Primary Function of Commissions

"THE reduction of rates, however—notwithstanding the popular impression to the contrary—is not the primary function of commission regulation. The commissions were created to secure adequate dependable service; to prevent wasteful duplication of facilities; to insure proper financing and accounting; to eliminate discrimination, both in service and in rates; and to prescribe FAIR *rates."*

ll for electric service. There was no hange in gas and telephone rates and $25,000 increase in steam rates, making a net reduction to consumers f $160,405.

ACCORDING to a report analyzing the work of the Ohio Public Utilities Commission for 1937, rate reductions ffecting consumers of electricity, gas, ater, and telephone service amounted o $3,806,604.07. This figure is based n previous consumption of various onsumers in the different classes of tility service. The 1937 figure comares with $3,104,077.45 for 1936 and 3,044,177.72 for 1935. During the ear 1937 a reduction amounting to 1,912,000 in telephone rates was rdered by the commission after hearng. Reductions in electric rates mounting to $1,794,813.06 were ade voluntarily or secured by negotitions, informal compromise, or acceptance of ordinances. Of these reductions the savings to domestic consumers are estimated at $1,280,-530.70; commercial consumers, $246,-923.26, and industrial consumers, $267,359.10. Reductions in gas rates amounted to $99,791.01.

The Oklahoma Corporation Commission reports that electric rates were reduced in 1937 to the extent of $704,-300 per annum. The telephone rate reductions amounted to $5,250 per annum. This was in addition to reductions in 1936 in electric rates amounting to a saving of $225,000 per annum; telephone rates to the amount of $131,000 per annum; gas rates, $25,000 per annum. The commission has only limited funds available for its use notwithstanding multifarious duties imposed upon it. Reductions amounting to $1,000,000 in two years are, therefore, a commendable record. These figures of course do not include

savings accruing to the people through the activity of the railroad rate department of the commission.

THE estimates in the savings due to rate reductions in Oregon for the year 1938, through activities of the Oregon Public Utilities Commissioner, are as follows: Electric utilities, $600,000; telephone and telegraph, $120,000. T. O. Russell, chief engineer, makes the following interesting comment on the electric rates of the state:

> The annual revenues of the electric utilities of the state are now slightly in excess of $19,000,000. While perhaps the $600,000 estimated annual saving appears small compared to the gross revenue, it must be remembered that Oregon's electric rates for residential service, in the range of normal use, are the lowest in the nation.
>
> The 1936 national average, 4.69 cents per kilowatt hour, is 56.33 per cent higher than the average residential cost of 3 cents in Oregon, for the same year 1936. Our 1937 figures will not be available until all our electric utilities have submitted their annual reports, and we think that this year the average will be below the 3 cents average of last year, thus further increasing the spread between our average residential rate and that of the nation.
>
> This does not take into consideration the possible effect of Bonneville energy on the rates within the state which, of course, will remain problematic until the method of full use of Bonneville energy in the state has been determined.

THE present Pennsylvania Public Utility Commission took office April 1, 1937. According to a news release issued by the commission on December 31st more than $5,500,000 was slashed from the annual bills of utility customers as follows: Philadelphia Electric Company, $3,027,068, the largest single rate reduction ever ordered in Pennsylvania; Duquesne Light Company, Pittsburgh, $1,256,000; Metropolitan Edison Company, Reading, $795,900; West Penn Electric Company, Pittsburgh, $24,000 Solar Electric Company, Brookville $11,300; miscellaneous companies $413,357.

The utility commission states tha several million dollars more, the exac amount known only to the utilitie making the payments, have gone bac to customers in compliance with com mission regulations requiring retur of deposits under certain conditions These returns also carried interest o the deposits. Orders requiring The Bell Telephone Company of Pennsyl vania to discontinue its extra monthl charge on hand telephone instrument will save subscribers, it is estimated approximately $300,000 annually. A a result of the commission's effort th Pennsylvania Telephone Corporation largest independent telephone com pany in the state, on January 1, 1938 discontinued a similar charge, result ing in an estimated savings to sub scribers of $10,000.

Estimated savings in rate reductions through the Rhode Island Division o Public Utilities of the Department o Revenue and Regulation for 1937 were as follows: Telephone, $58,847 gas, $42,000; electric, $41,725; water $1,590. In addition to that gas com panies returned to their customers from whom deposits had been re quired, approximately $125,000. This year in January trolley and bus rates have also been reduced resulting in a saving of approximately $15,000 to the traveling public.

The state of Rhode Island is now engaged in valuation proceedings covering all of the electric properties in the state for the purpose of determining whether or not further electric rate reductions can be made.

DURING 1937 the South Carolina Public Service Commission obtained rate reductions amounting to $274,823 annually. This effected an actual saving during 1937 of $234,340, due to the dates on which the reductions became effective. The reduction as applied to customer classifications was as follows: Residential, $138,064; commercial, $83,874; industrial, $35,235; other electric, $2,050; gas and water, $15,600. Since the organization of the electrical utilities division in 1932 through December 31, 1937, the savings to South Carolina customers have amounted to $8,111,949 (accumulated).

The South Dakota Board of Railroad Commissioners does not have jurisdiction over gas and electric rates, but does have jurisdiction over the rates of telephone companies. The commission reports that during the years just previous to 1938, there were a great many reductions brought about in telephone rates in the state by negotiations with telephone companies or by direct orders of the board. These rates for the past year have been at the very minimum for which telephone service could be furnished and there was, therefore, practically no change in the rate situation in South Dakota during 1937.

The forces of the Texas Railroad Commission were employed in 1937 largely in auditing and evaluating of some 189 towns served by the Community Natural Gas Company, and rate reductions amounting to $442,000 were ordered by the commission of which amount $64,000 was not contested. The commission a few years ago established its rate-making division and since that time has fixed the gate rates to be charged for natural gas by all pipe lines in the state. The commission is now making available to such towns as may request it the services of its engineers and auditors for the purpose of establishing a fair and reasonable price at the burner tip. This policy has been in effect over two years, during which time reductions in burner tip rates amounting to approximately $500,000 per year have been fixed and not contested.

THE principal reductions in power and light rates ordered by the Utah Public Service Commission in 1937 will result in an estimated annual sav-

NEW YORK RATE REDUCTIONS 1931-1937

Year	*Negotiations—no formal case*	*Negotiations in formal cases*	*Ordered at conclusion of a rate case*	*Voluntary*	*To religious institutions to comply with statute*	*Total*
1931	$ 382,000	$ 9,516,000	$ 39,000	$ 118,000		$10,055,000
1932	1,371,000	346,000	37,000	461,000		2,215,000
1933	1,571,000	1,917,000	1,700,000	610,000		5,798,000
1934	849,000	860,000	1,790,000	614,000	$266,000	4,379,000
1935	26,000	10,723,000	(Inc.) 316,000	4,414,000		14,847,000
1936	165,000	173,000	5,707,000	1,023,000		7,068,000
1937	601,000	7,308,000	1,310,000	1,647,000		10,866,000
Totals	$4,965,000	$30,843,000	$10,267.000	$8,887,000	$266,000	$55,228,000

ing of $350,000. In addition, miscellaneous reductions were effected in power and light schedules amounting to an estimated annual saving of $5,500. A general reduction was also ordered in the exchange rates of the principal telephone company serving the state, resulting in an estimated annual saving of $140,000.

During 1937 rate reductions ordered by the Vermont Public Service Commission totaled $134,810, distributed as follows: Electric, $120,612; telephone, $13,293; gas, $905. These reductions were accomplished without the necessity of litigation.

The total estimated savings involved in rate reductions negotiated by the Virginia State Corporation Commission during 1937 amounted to about $972,000 annually for the electric, gas, and telephone customers. It might be mentioned that the total reductions for the four years, 1934-1937, both inclusive, amounted to approximately $3,758,000, for the same class of customers.

Rate reductions made effective during 1937 through the state of Washington Department of Public Service amounted to $317,879. Of this sum $130,950 was by formal orders of the department; $33,082, voluntary; and $153,847, secured by negotiation. The reduction in electric rates amounted to $311,027, and in telegraph rates to $6,193. There were also some slight reductions in telephone and water rates. The rate reductions in 1936 amounted to $772,549; in 1935 to $432,292; in 1934 to $65,831; and in 1933 to $11,710, which together with the 1937 reductions make a total of estimated savings to ratepayers of $1,600,261.

Reductions in utility rates in Wisconsin during 1937 produced an estimated annual saving of $1,829,480. Electric reductions totaled $1,174,472, benefiting 390,881 customers; water rates, $334,874, benefiting 119,465 customers; gas, $256,751, benefiting 130,903; telephone, $63,383, benefiting 10,023 customers. These reductions were either authorized or ordered by the Wisconsin Public Service Commission. Approximately two-thirds were ordered by the commission, the remaining one-third constituting voluntary reductions.

The Wyoming Public Service Commission, effective February 1, 1938, of its own motion abolished hand-set charges on telephone equipment producing an estimated annual saving of $15,000. It should be stated that the appropriations by the legislature for the use of the Wyoming commission are not sufficient to permit it to engage in formal rate cases.

SOME of the state commissions have not full jurisdiction over utility rates and others have not estimated the saving resulting from the reductions ordered. The omission of some of the states from this summary does not mean that reductions have not been ordered in those missing jurisdictions in which the commissions have authority over utility charges.

From the large number reporting, it will be seen that while the cost of labor and almost everything else went up in 1937, utility rates were constantly reduced. It was another active year for the commissions.

The reduction of rates, however—notwithstanding the popular impression to the contrary—is not the primary function of commission regula-

tion. The commissions were created to secure adequate dependable service; to prevent wasteful duplication of facilities; to insure proper financing and accounting; to eliminate discrimination, both in service and in rates; and to prescribe *fair* rates. Such is the language of the commission statutes.

Fair rates are rates which are fair to the utilities as well as to their customers. The establishment of *fair* rates may or may not result in reductions. It may justify increases. If a utility company, as has sometimes been the case, is not making even its operating expenses, to say nothing of a profit or return, it would be manifestly unfair to require a reduction in its rates, even if the commissions were disposed and had the power to do so. In such a case the protection of the public itself would require not a decrease but rather an increase in the rates. So, then, rate reductions, important as they are to the public, do not constitute an adequate, or indeed an accurate yardstick for measuring the effectiveness of commission regulation. Even judged by that standard, however, the commissions have made a markedly fine showing.

WHILE on the subject of rates it might be well to remember that in the long run legislatures, commissions, or courts do not have the final say as to what is or is not a reasonable rate. The customers and the investors determine that question. If it is urged that the customers have nothing to say because they have to have the service, then the final authority on the reasonableness of rates is the investor. He will not voluntarily invest unless he thinks the return is reasonable, no matter what any legislature, court, or commission may declare. Therefore, there is a dead line in rate reductions, even if there were no constitutional protection against confiscation of the investor's property.

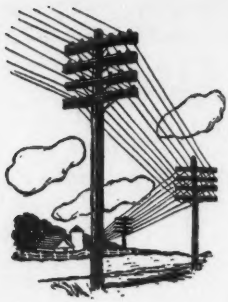
To the credit of state commissions, they have not hesitated to deny public demands for rate decreases when they deemed such demands unfair; and they have ordered increases, even in the face of popular clamor where conditions so required. Such increases were not only fair, but in the public interest.

In no other way, aside from commandeering capital by taxation, can capital for the maintenance and extension of utility service be secured than by satisfying investors of the reasonableness of the return. The free flow of capital into utility service under commission safeguards should be convincing proof of the effectiveness of commission regulation. The retreat of capital from this service or refusal to enter it would, in the absence of fear of government competition, be very strong evidence that there was something wrong with commission regulation.

White *versus* Black Coal

"SOBER calculation shows that the total energy released by Niagara Falls can be matched by burning only eight carloads of anthracite an hour. Anthracite is such a concentrated fuel that a single ton yields as much energy as is liberated when 65,000 tons of water roar over Niagara."

—DR. HAROLD J. ROSE,
Mellon Institute of Industrial Research.



Nebraska REA Worries

It being easier to procure signatures for public electric projects than to get farmers to wire their premises for the service, Senator Norris' state will, therefore, in the opinion of the author, have more rural power than rural customers can afford to pay for; and this naturally raises the question of the desirability of a Federal subsidy for nonpaying rural public power districts.

By H. T. DOBBINS

THE rural electrification program of the Federal government in Nebraska has run head-on into the same obstacle that in the past prevented the private power companies from previous occupation of territory now being preëmpted by the Federal districts—a dearth of customers in sufficient numbers to make construction, operation, and maintenance profitable.

While it was comparatively easy for promoters of the public power districts to secure a sufficient number of signatures to meet the requirements of the REA, to wit, 2.4 customers to the mile of proposed construction, in the organization of the districts, the records show that only from 1 to 1.6 landowners so far have had their farms wired and are receiving or will soon be in a position to receive service.

This has resulted in REA sending agents into the state to stir the districts into greater promotional activity, which has in the past been left, in the opinion of the administration, to the initiative of the farmers themselves or to the activities of wiring contractors. J. W. Pyles, one of these representatives, told district officials that the administration did not want these projects to fall back into its lap, which will result if a sufficient number of paying customers are not secured. Unless enough are obtained lines will not continue to be energized, he warned.

It is a matter of grave doubt whether the government conditions can be met. In many sections of Nebraska, as well as in states to the north, south, and west, there are not enough farmers to the mile to meet the requirements, if all of them actually took service, while in the more thickly settled portions there has been heavy private development. This is particularly true in the eastern fourth of the state

where the Nebraska Power Company and the Iowa-Nebraska Light and Power Company have been supplying and are continuing to supply approximately 4,500 farmsteads.

NONE of the public power districts save that located in Gage county, a thickly populated section of southeastern Nebraska, has been operating long enough to make any accurate statistical information available. In that county a full year's operation was recently reported. In that county the government has loaned $396,000, with which 460 miles of line have been constructed. There are 730 customers, or 1.6 to the mile. Revenues for the twelve months were $27,293 and operating expenses, including $7,442 for current purchased, were $19,400, leaving an operating income amounting to $7,893.

No interest was paid during the first nine months of the year, but $4,070 was paid for the remainder. With interest at 3 per cent and amortization at 3.91 per cent (the terms in the REA loan contract for amortization or depreciation) this leaves a deficit of $19,470 from the year's operations, or $26.67 per customer.

The lack of sufficient paying customers exists as of today in practically all of the 15 districts organized in Nebraska. This is true of those districts in the more thickly populated sections of the state as well as those with a smaller farm population. On the basis of their own experience, operators of private power companies express disbelief in the ability of the districts to meet the Federal requirements as to number of customers to mile of transmission line.

TELEPHONE company executives are equally skeptical. In the last six years they have lost more than 50,000 subscribers, nearly half of whom are farmers who gave as their reason for canceling service that they were unable to pay the rate charged, usually from $1.25 to $1.75 a month, the former rate being charged by locally owned companies and the higher rate by the larger corporations. That this was the main reason is also indicated by the fact that the farm mutual telephone companies, which furnish service at cost, usually $1 a month, have lost subscribers in the same proportion, although ownership rests in the men who supply to themselves this type of service. Telephone executives ask how it is possible, in the face of inability of farmers to pay for telephone service, for them to pay monthly electric energy bills several times the telephone charge.

Several other obstacles have been encountered by the districts. In anticipation of a large development of rural electrification financed by Federal funds, the larger private power companies occupied a considerable part of the field by the construction of hundreds of miles of transmission lines, particularly in the eastern section, where farms are most numerous. It was inevitable, under such a program, that a considerable part of the undeveloped fields that were left to REA consisted of areas where it was questionable if a profitable number of electric service customers could be secured.

WHERE the public power districts sought to parallel construction already in place by telephone com-

panies using grounded construction, the state railway commission has denied applications unless the districts meet in part at least the cost of metallizing the telephone companies' wires.

The Eastern Nebraska Public Power project, located in a section the most densely populated of any farming area, sought to parallel lines of the Nebraska Power Company, and the latter went into court to test a ruling of the railway commission that the commission had no authority to prevent such construction, their powers being limited to approval of construction plans. Faced by the strong possibility of an adverse ruling, the power district abandoned the proposed parallel construction.

While drouth conditions do not materially affect this particular district, they are forming a serious handicap in districts located in the western three-fourths of the state where crops have been extremely short for four years, and where public utilities had practically suspended drives for new business because of the impoverished condition of the farmer.

BECAUSE of internal strife the Eastern Nebraska Public Power District has suffered a dissipation of energies. A minority of the board has repeatedly raised objections to the policy of the majority in appointing themselves and some of their relatives to salaried positions, and in retaliation the majority voted to unseat the minority by narrowing the limits of the district. As a result of this warfare two members of the majority have been called into court to defend an action to oust them on the charge of misconduct in connection with wiring contracts.

The Nebraska experiment has been undertaken in the face of the fact that large sections of the state are sparsely settled. A survey made by E. B. Lewis of the University of Nebraska for FERA in 1935 showed that there are 129,458 farms in the 93 counties of the state. Of this number 65,267 are in 37 counties having an average of more than 3 farms to the square mile; 32,366 in 20 counties having from 2 to 3 farms per square mile, and 31,825 in 36 counties having less than 2 farms to the square mile. These figures place a heavy limitation on the development of business on public power projects.

A later estimate showed that supplying electric energy was feasible in the case of 52,000 farms, and that of this number 8,000 are already purchasing current from private power companies. The average consumption per farm is reported by them to be in

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¶ "THE *rates to be charged by the rural electrification districts (Nebraska) average 15 per cent less than are charged by the private power companies. The executives of the latter companies say their rates make no return upon the investment necessary. Several directors of rural electrification power districts are frankly doubtful if their rates will enable them to pay out, but being politically minded they have no intention of urging increases.*"

excess of 725 kilowatt hours per year.

MR. Pyles' statement that unless the number of customers per mile can be greatly increased the government will have these public power developments back in its own lap is borne out by figures compiled by W. R. McGeachin, contract manager for the Iowa-Nebraska Light & Power Company of Lincoln. These districts are purchasing current wholesale at 1.5 cents per kilowatt hour. They are charging retail rates according to this schedule: Minimum monthly bill, $3.50, including 50 kilowatt hours; next 50 kilowatt hours used per month, 4 cents per kilowatt hour; next 100, 2.5 cents; excess, 2 cents. The investment per mile of transmission line is $800, and on the basis of 1.3 customers to the mile, this represents an investment per customer of $615 per mile. Taking into consideration an operating cost—overhead—of $25 per mile and the customary line losses, no taxes being paid, Mr. McGeachin reaches these conclusions:

If the customers have an average use of 600 kilowatt hours per year, the loss per customer is $43.95; if the average is 1,200 kilowatt hours per year, the loss per customer is $30.66, and if the average is 1,800 kilowatt hours per year, the loss is $23.70.

On the basis of 600 kilowatt hours' use per year, the district would lose $28.95 per customer per year if it received its supply of energy for nothing. On the basis of 1,200 kilowatt hours' use the loss would be $4.95 per customer per year if current were gratis.

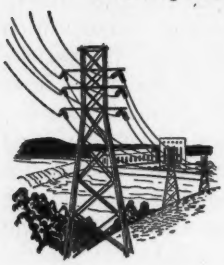
On the basis of 600 kilowatt hours' use per year, the total revenue of a district would not be sufficient to pay the government for interest and amortization, leaving nothing whatever for operating use. If the government waived interest and amortization charges (6.91 per cent) the district would still be in the red since there would not be enough revenue to pay operating expenses. On the basis of this use rates would have to be doubled in order to make the districts pay. With consumption trebled at present rates there would still be a substantial deficit.

SENATOR George W. Norris, whose influence with the administration secured for Nebraska a larger proportion of Federal allowances than would be her natural share, appears to have recognized the situation. In a recent interview he said that the government should subsidize these projects in order to provide the farmer with the modern conveniences for his household and for power. This was a repetition of a statement made at the time REA was first under discussion.

Twenty-eight rural public power districts have been formed in Nebraska. Allotments of Federal funds totaling $5,000,000 have been made for fifteen of these districts, in which the engineering estimate of cost totals $10,700,000. The remaining funds are expected to be made available as development progresses. Contracts have been made only on the basis of present allotments. A total of 7,280 miles has been surveyed in these districts. The remaining thirteen districts comprise 2,542 miles with an estimated cost of $2,635,000. No funds have as yet been allocated for any of the last-formed public power districts.

Three of the fifteen districts are lo-

Proposed Subsidy of Nebraska Power Districts



"SENATOR Norris' proposal that the Federal government subsidize public power districts in order to insure service to a larger number of farmers than have had service available in the past has not gone beyond the proposal state. At the present time there is no way of computing how much that subsidy would have to be, and future economic conditions in the state would be a controlling factor."

cated in the extreme western end of the state, in the irrigated section, power being supplied from government developments already in place on the North Platte river. Practically all of the other twenty-five districts are located in the eastern fourth of the state of Nebraska.

Excepted areas are three counties close to Omaha, in which Nebraska Power Company development has been intensive, with six northeastern counties untouched. Penetration as far as the center of the state has been restricted only to areas surrounding populous centers.

The remaining portion of the state, with probably half the total number of farms, has been passed up as territory where paying development is impossible.

NEBRASKA has received for these purposes much more than her ratable share of Federal grants and loans, estimated for all public power purposes at a third of the total set aside by Congress for this work. One reason is that $25,000,000 of Federal money will have been invested in generating plants in the valleys of the Platte and Loup rivers and $30,000,000 at least will be expended on a third development on the Platte river. These must find new markets for their production. The rural electrification projects are expected to supply a large part of this need. The other reason is Senator Norris. He is intent upon creating in his home state a little TVA, and he is in high favor with the administration. To make certain of a supply of firm power he has induced the administration to seek to negotiate for the purchase of the large private power companies which have such a supply. All of these developments must fit into his picture if his dreams are to come true.

The rates to be charged by the rural electrification districts average 15 per cent less than are charged by the private power companies. The executives of the latter companies say their rates make no return upon the investment necessary. Several directors of rural electrification power districts are frankly doubtful if their rates will enable them to pay out, but being politically minded they have no intention of urging increases. Private power companies' officials are skeptical of the claim that farmer customers of the

public power districts will enlarge their uses of current to a point where revenues will be satisfactory. Their experience has been that the average farmer is interested only in adequate lighting of his premises and in electric refrigeration, the latter because he is barred from ice service.

ANOTHER claim of the public power district spokesmen is that when normal crop conditions return the requisite number of patrons per mile will be obtained. How much reliance can be placed on this factor may be estimated from the fact that in the Gage county district, an area where there has been no failure of wheat crops, the number of customers per mile is but 1.6. This district has been operating for a year and a half and has a 66 per cent development.

Private power companies have consistently followed the policy of noninterference with these projects. They have contented themselves with making sure that compliance has been made with the national safety code at crossings. They have not sought to duplicate public power lines, nor have plans of these public power districts included parallels save in a comparatively few instances.

Private power company experience has been that an average of 2.4 customers to the mile is a Federal government condition for public power districts that cannot be met in those sections of the state where exist average-sized farms and especially where there has been considerable private company development.

Senator Norris' proposal that the Federal government subsidize public power districts in order to insure service to a larger number of farmers than have had service available in the past has not gone beyond the proposal state. At the present time there is no way of computing how much that subsidy would have to be, and future economic conditions in the state would be a controlling factor. It is inevitable that if the Senator were able to secure subsidies for districts that had been recommended as being able to pay out and which had failed, there would arise a demand for extension to other areas no one has yet suggested should be developed. This would mean a continuing subsidy paid from but one source, the public treasury.

Will rural electrification development go on in Nebraska? It will as long as Senator Norris is able to secure generous allocations to the state as has been his record to date.

Rural Electrification and the Cities

"WHEN rural lines are built, the farmers get the lines with a mortgage on them and the industrial cities get 75 per cent of the money. Twenty-five per cent of it stays in the area where the contractor puts the line and pays for the labor on the job, and the other 75 per cent goes into our industrial economy in our industrial cities, and you can see here that cities that have no connection whatsoever with rural electrification actually get dollars to employ labor."

—JOHN M. CARMODY,
Administrator, Rural Electrification Administration.

Regulation of Public Utility Securities in California

If more states in this country had, in the opinion of the author, followed the example of California, we should not now have the acrimonious controversy over the public utility industry, which is so detrimental to all concerned; nor should we have the snarl that has developed in so many quarters.

By DUDLEY F. PEGRUM
ASSOCIATE PROFESSOR OF ECONOMICS,
UNIVERSITY OF CALIFORNIA

THE controversy over valuation of public utilities for rate-making purposes, dormant for some time during the depression, has suddenly shot to the fore again. This perennial bone of contention has been placed squarely in the vanguard of national issues, first, because of the publicized attempts of utility executives and the administration to reach a solution satisfactory to both sides, and second, because of litigation in the courts of the United States, involving that question.

The California commission, recognized as one of the outstanding public utility commissions of this country, has achieved signal success in its regulation of public utilities for a quarter of a century. During this time it has adhered strictly to the principle of historical cost, or prudent investment, in fixing the base upon which it has calculated fair return, and under the commission's guidance the public utility industry of this state has flourished. No greater tribute can be paid to the success of California's policy of regulation than to call attention to the lack of abuses and controversies in this state during a period when all industry in general, and public utilities in particular, have been under fire.

Much of the success of regulation in California, undoubtedly, can be attributed to the persistence with which the state commission has adhered to the principle of a fair return on historical cost prudently established. What is not generally realized is that the policy of security regulation, logically developed and consistently adhered to, since the commission was first established in 1912, has been of equal, if not of greater, significance.

The control of security issues of enterprises coming under their jurisdiction is probably the most important single function exercised by public

service commissions. Successful regulation is impossible without comprehensive supervision of financial practices, and, in the opinion of the writer, control of security issues must be the starting point of any satisfactory regulatory scheme. Yet, it is only in recent years that this aspect of regulation has received any appreciable attention, and even today this phase of the public utility question is far overshadowed by the controversy over reasonable rates which, in the end, derive their real significance from financial requirements, at least as far as fair profit (or return) is concerned.

THE Public Utilities Act of California was passed by the state legislature in 1911 and became effective on March 23, 1912. This legislation was the combined result of experience in California and a thorough-going study of existing regulatory practices throughout the United States. It was designed to deal with public utility control in all aspects necessary to insure to the public adequate service at reasonable and just rates.

In keeping with this aim was the affirmative responsibility, imposed upon the commission which was created, of seeing to it that the utilities of the state receive adequate protection and that public utility development be fostered. For the first time in California, the authorities were charged with the duty of supervising carefully the financial practices of all utilities under their jurisdiction. The system of regulation thus set up contemplated that the supervision of public utility finance would be an integral part of the program of public utility control. Indeed, Max Thelen, one of the members of the first group of commissioners and later president of the commission, felt that control over the issuance of securities and the disposition of the proceeds derived therefrom, should form the keystone of the entire arch of public utility regulation.

WITH this background, it is not surprising that the legislature gave the new commission very extensive and detailed powers over the financial practices of privately owned utilities, operating or incorporated in California. In the words of the law, the issuance of securities against public utility property situated in this state "is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall be continued to be vested in the state . . ." All evidences of ownership or indebtedness payable at periods of more than twelve months after the date thereof must receive commission sanction before they can be issued. Notes for proper purposes and payable at periods of not more than twelve months from the date thereof, may be issued without the consent of the commission, but they cannot be refunded without application. This provision has been interpreted to mean that demand notes must be sanctioned since it is possible that they may be outstanding for longer than twelve months.

The law itself is quite specific as to the purposes for which securities may be issued. In general, as applied by the commission, these provisions of the law mean that public utility securities of any kind whatsoever may be issued only for items properly chargeable to capital. Public utility property cannot be encumbered for nonutility purposes,

and when concerns are engaged in both a utility and a nonutility business they must make application to issue securities. Careful records must then be kept of the different businesses so that the utility activities will not be burdened with an unreasonable part of the expense of the entire enterprise and so that the proceeds of the securities devoted to the utility part of the business will be applied strictly in accordance with the law. In order further to assure precise conformity to the principles of security regulation as developed in this state, the commission has established technical conditions of issuance of considerable scope, which must be rigidly complied with.

THE law specifically provides that the state of California in no way guarantees any securities issued under the authority of the Public Utilities Act, but the commission has found it necessary time and again to reiterate this fact. Comprehensive supervision and sanction of security issuance carries with it a strong flavor of responsibility on the part of the governing authorities. The California commission has recognized and assumed this responsibility even though it has constantly emphasized the fact that:

> People who finance public utilities in this state must continue to take the risk of success of the venture just as they have always done in the past. The Public Utilities Act is no magic talisman insuring public utilities against failure in case good judgment is not exercised in the financing and construction thereof. Under the Public Utilities Act, the projectors of public service enterprises may rest assured that in so far as the commission has jurisdiction, the utility will be permitted to collect rates sufficient to yield a fair return on the money wisely and sanely expended in serving the public, but more than this they have no right to expect.[1]

There is a presumption, when an application for the issuance of securities is granted, that it has passed a test, which, at the time of the hearing, establishes reasonable ground for the belief that prospects for the success of the enterprise are good, unless reasons to the contrary are given in the opinion. However, when the success of an enterprise or the return upon securities is in doubt, the commission, if for some reason it makes the authorization, demands that the purchasers be fully informed of the entire situation.

ONE final item to be noted in this connection is that involving abuses and bad finance which arose prior to the assumption of control by the commission. The provisions of the legislation could not be made retroactive, but the sweeping powers con-

[1] *Re* Central California Gas Co. (1912) 1 Cal. R.C.R. 134, 141.

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¶ "THE *foundation upon which the whole security regulation program of the California Railroad Commission has been erected is the valuation of the property. For rate-making purposes, the California authorities have always used historical cost, which is simply the estimate of the investment deemed necessary to erect a utility into a going concern. . . . All investment since the commission assumed power has been kept on a cost basis and included in the valuation accordingly.*"

tained in the Public Utilities Act have made it possible for the authorities to correct, or at least materially to improve over a period of time, evils arising from earlier actions over which no control existed. While the commission probably lacks certain powers to prevent or undo certain acts, yet the negative power of being able to refuse sanction to new security issues generally proves to be controlling. Positive steps have been taken on many occasions by attaching conditions to orders or by refusing application until financial structures have been improved. Here, it should be remarked that the mere fact that new securities do not add to existing obligations is insufficient ground for granting an application. The entire financial structure must be considered and the request granted or denied accordingly.

The foundation upon which the whole security regulation program of the California Railroad Commission has been erected is the valuation of the property. For rate-making purposes, the California authorities have always used historical cost, which is simply the estimate of the investment deemed necessary to erect a utility into a going concern. (Land has been included at current market values because of the court ruling in the Minnesota Case.) All investment since the commission assumed power has been kept on a cost basis and included in the valuation accordingly.

EXACTLY the same principles of valuation have been applied to determine valuation for purposes of capitalization. When application is made to issue securities, two aspects of valuation emerge. The first is the relation of the value of the property to the entire financial structure; the second is the relation of the value of the property to be acquired, or the investment to be made, to the securities to be issued. Each case, of course, has to be decided on its merits and exceptional situations call for exceptional treatment. However, the rule from which there are few divergencies, is that capitalization cannot exceed valuation. Thus when all of a utility's property can legitimately be included in the rate base, the latter also becomes the basis for capitalization.

The principles which govern the determination of the fair value of public utility property also set the standard for reasonably capitalizable items. Anything which is rejected as being inappropriate for inclusion in the valuation figure is also excluded from the purposes for which securities may legitimately be issued. Much detail is involved in this connection and the commission constantly has to decide whether a particular item adds to the investment in the property and, if so, what the precise amount is. Thus expenses connected with promoters' services and the organization of an enterprise are eligible for capitalization if they are honestly and wisely incurred.

WHEN, however, individuals have taken stock and have not rendered an equivalent in return, the authorities have voiced their disapproval and have taken such steps as were possible to correct the resulting evils. On the same ground, intercompany profits, past deficits, discount and premium on securities, and depreciation accumulations cannot be capitalized. When, however, earnings have been ex-

Flexible and Workable Financing

"A REVIEW of the California Railroad Commission's work discloses a decided improvement in public utility financial practices and procedure since 1912. The change in this respect is a truly great tribute to the success of the policy pursued in this state. Furthermore, regulation by this commission deserves high recognition for the building up of a system of financial control which has proved to be flexible, adaptable, and workable."

pended on property appropriately chargeable to investment they may be capitalized if their genuineness is established. Similarly, although the authorities are without power to authorize a stock issue as a bonus against surplus, it has been held that when a company has reinvested stockholders' money, stocks may be issued against the reinvestment and distributed as a dividend.

Cost of reproduction as the correct basis for determining valuations for security issues was advanced frequently and insistently during the years just preceding the depression. Applications for consolidation of properties were numerous and holding company activities in the acquisition of operating utilities called for special attention. The California Railroad Commission took the unequivocal stand that valuation for consolidation purposes should be determined by precisely the same principles as for rate making, stating:

> We believe that when we are called upon to authorize the issue of stock and bonds to refinance public utility properties, we should adhere in general to the same principles as are followed by us when authorizing the issue of securities to finance properties to be constructed anew. An estimate of what it would cost to reproduce the properties now, whether depreciated or not, an alleged sound value, or even what a purchaser may have or has agreed to pay for the properties, are too fanciful to warrant serious consideration.[2]

In other words rate bases already established plus additions, betterments, and net current assets, give the maximum figures that can be used for capitalization purposes. Of course, the capitalization of a public utility corporation and valuation of its property are not synonymous terms but the commission will not authorize the issue of securities for public utility purposes where the "fair value" of the public utility property is less than the money or equivalent to be received in return for the securities so authorized.

[2] *Re* California Water Service Co. (1927) 30 Cal. R.C.R. 876, 882, P.U.R. 1928C, 516, 525.

One other aspect of valuation should be noted in this connection. Actually, the California commission does not fix, directly, the price which a utility may pay for properties. It has even expressed the doubt that it possesses this power.[3]

It refuses, however, to allow the purchaser to capitalize the price in excess of the valuation and will not sanction the consolidation if the purchase price agreed upon will embarrass the buyer. If there is an excess of purchase price and this can be satisfactorily taken care of by the vendee company out of its surplus, the consolidation will be allowed, provided, of course, that the procedure is to the interest of the public.

While valuation may be said to be the heart of the regulation of security issues, and while it sets the upper limit of capitalization, except in rare and unusual cases, yet it is not the only important factor which is given consideration. Of almost coördinate importance with valuation is the emphasis given to prospective earning capacity as a factor to be given thorough consideration by the commission when it is passing on applications to issue securities.

It is necessary for applicants to show that there are reasonable prospects for providing for fixed charges as well as a margin for stockholder equities. The moral responsibility which the commission has assumed in regard to public utility finance, necessitates a careful examination of prospective earnings.

Furthermore, in its rate-making capacity the commission assures the utilities of an income adequate to make them financially successful if this is possible, and if their financial structure is sound. Then too, the commission is aware of the fact that, in spite of the significance of the rate base in determining fair rates, the courts have required that finance be considered for purposes of fixing "fair value." Hence, when new securities are applied for, steps are taken to insure sound finance, or at least to see that there are reasonable prospects for the success of the enterprise. Thus, rate making and security regulation are definitely integrated although the decisions clearly emphasize the fact that the former is primary and controlling.

Flexibility of financial structure with regard to earnings has also received careful attention. During the early years of its jurisdiction, the commission, as a matter of general policy, held to the principle that a public utility should not encumber its property with obligations of indebtedness for more than 80 per cent of its fair value. As a rule this stand has also applied to the acquisition of new property and extensions, although in instances of exceptional financial standing bonds have been authorized of a par value equal to the full amount of the property to be purchased. In the years following the war the commission adopted the policy that the total of bond issues outstanding should not exceed 60 per cent of the fair value of public utility property. Decisions have also been rendered which indicate that preferred stock is considered to be in practically the same category as bonds because of the implications arising from the dividend contract. The buyer of preferred stock carrying a specified dividend rate ex-

[3] *Re* South Coast Gas Co. 33 Cal. R.C.R. 52, 55, P.U.R. 1929E, 476.

pects that dividend to be paid and the commission takes cognizance of this fact in passing upon security issues.

REORGANIZATION, which has been a perpetual thorn in the side of public utility commissions, has been handled with exceptional commendability by the California authorities. Reorganization cases always present unusual problems because of the complexity and multiplicity of interest involved, but the California commission has endeavored, with signal success, to settle the financial difficulties once and for all. Valuation in reorganization, as in other financial proceedings, forms the cornerstone upon which the decisions are built. Hence, every effort is made to see that valuation and capitalization correspond. Moreover, no plan is approved which does not ensure, to the best judgment of the authorities, the success of the reorganized enterprise. However, the commission is as liberal as possible on matters of financial structure, if such action will avoid foreclosure proceedings, because these, invariably, are long drawn out and impede development and service.

The commission has been particularly critical of the practice, so prevalent in reorganization proceedings, by which every conceivable person makes reorganization a Roman holiday at the expense of the security holders. Hence, every dollar not fairly and reasonably necessary for the payment of the expenses of the receivership and other expenses in connection with reorganization should be saved for the new company for purposes of rehabilitation. Consequently, reorganization expenses are normally not capitalizable although this may be allowed in exceptional cases. In that event the commission fixes the amount of the expenses against which securities may be issued.

A REVIEW of the California Railroad Commission's work discloses a decided improvement in public utility financial practices and procedure since 1912. The change in this respect is a truly great tribute to the success of the policy pursued in this state. Furthermore, regulation by this commission deserves high recognition for the building up of a system of financial control which has proved to be flexible, adaptable, and workable. A tradition of regulation and spirit of coöperation have developed which make possible continuous improvement both in regulatory practice and in the status of public utility securities.

Shortcomings in both legislation and policy are inevitable in any system of regulation, not only because of the fallibilities of the authorities, but also because of the difficulties inherent in many of the situations which they face. If more states in this country, however, had followed the example of California, we should not now have the acrimonious controversy over the public utility industry, which is so detrimental to all concerned, nor should we have the snarl that has developed in so many quarters.

"HOW *is it possible for the railroad industry to be so powerful as to require regulation to prevent excessive earnings and, in spite of this power, suffer a financial collapse because of inadequate earnings?*"

—FAIRMAN R. DICK,
Member, Roosevelt & Son.

Wire and Wireless Communication

SOMEWHAT conflicting interpretations have been placed upon the action of the House of Representatives in voting down by the overwhelming majority of 234 to 101 the Connery resolution to investigate the radio broadcasting industry and its regulation under the FCC. The Connery resolution was brought to the floor by Chairman John J. O'Connor, of the House Rules Committee, in a desperate eleventh hour attempt to jam it through the lower house before the bell rang for adjournment of the session. Inasmuch as a much closer fight was expected, Washington observers were looking for some explanation of the administration's surprising show of strength.

Walter Brown, radio observer of the weekly magazine *Broadcasting*, was inclined to give administration leaders credit for the full face value of the wide decision suffered by the House Rules Committee on the final vote. Mr. Brown stated in part:

> The House action was regarded as a vindication of Chairman Frank R. McNinch, who had in two appearances before the Rules Committee taken the position there was no need for a congressional investigation. High tribute to the chairman was paid in the floor debate. The chairman contended that the FCC already has scheduled its own inquiry into allegations of monopolistic tendencies, and that it should be permitted to follow through.
>
> Even the action of the Rules Committee in reporting out the measure was challenged, when Representative Cox (D., Ga.) charged on the floor that a majority of the committee did not favor an investigation.

A somewhat different slant was taken by the weekly Washington letter, *P.U.R. Executive Information Service*, from which the statement below is quoted:

> The overwhelming vote (234-101) against the investigation resolution, however, is not to be taken as evidence of the real sentiment of the lower house on whether such a probe should take place. A combination of factors helped the administration to stave off this particular threat at least until another session. That the principal reason was political is shown by the partisan division in the roll call, wherein the Republicans furnished the bulk of O'Connor's support. Democratic members simply did not think it wise to go into an election campaign with another New Deal agency under congressional investigation. Next year, however, it may well be a different story unless FCC shows unexpected adroitness in cleaning its own house.

An analysis of the roll call vote seems to bear out the latter view to some extent. A mere half-dozen Republicans voted with the majority, whereas only twenty-five Democratic Representatives supported their own Rules Committee chairman. The last minute desertion from O'Connor's support of such outspoken Democratic critics of the FCC as McFarlane of Texas, Sabath of Illinois, and Voorhis of California, was pretty strong evidence that they had yielded, somewhat reluctantly perhaps, to the crack of the party whip, but only for this vote.

JUST the same there was some lively debate on the House floor before the resolution was finally killed. Administration supporters, alarmed lest the resolution put one more New Deal agency "on the spot" for congressional investigation during an election year (TVA and WPA are already on the same griddle), adopted the strategy of claiming that the big

"antimonopoly" investigation approved by both houses would cover the matter at issue. It was further objected that the FCC is already busy with its own investigation of broadcasting. Whether most members were convinced that the administration would be sincerely diligent in its efforts to expose any irregularity in the regulation of radio, the record shows that most Democrats voted that way.

Representative Warren, of North Carolina, voiced the administration viewpoint in the following passage taken from the *Congressional Record:*

> MR. WARREN. Mr. Speaker, I certainly am not here to offer any alibis that might be attempted to be answered later on in this debate as to my opposition to this resolution. No lobbyists have talked to me about it. No one has seen me and asked me to oppose it, although it is a well-known fact that this hall out here has been covered with them today asking members to support it.
>
> I am in favor of the House of Representatives setting up special committees to investigate anything where a substantial case has been made out. This proposal is nothing in the world but a duplication. An effort was made to bring it up in the Senate. They promptly discarded it, and now it is palmed off on the House in the closing hours of a session of Congress. On this calendar to be called up this very night is a broad and comprehensive resolution endorsed by the President of the United States for the investigation of monopolies. The distinguished chairman of the Judiciary Committee, the gentleman from Texas (Mr. Sumners), will tell you and every member who reads that resolution will tell you that it fully covers this very question. Why, may I ask, is it desired in these closing moments to set up this special committee?
>
> MR. O'CONNOR of New York. Mr. Speaker, will the gentleman yield?
>
> MR. WARREN. I yield.
>
> MR. O'CONNOR of New York. The investigation called for by the monopoly resolution is for the executive departments to investigate themselves. I do not think the gentleman believes that the sixth department is going to investigate the others. That is not going to be satisfactory.
>
> MR. WARREN. That resolution also provides that the committee shall have on its membership members from the House and the Senate.
>
> MR. O'CONNOR of New York. They, however, are not in the majority.
>
> MR. WARREN. Showing how slap-twisted this resolution is, the gentleman will note that it reads that this committee shall report at the Seventy-fifth session of Congress, a session which will be over in the short space of about twenty-four hours. . . .
>
> I will tell you what is back of this thing. The whole thing was started on baseless charges, which he has refused repeatedly to substantiate, by Commissioner Payne, a disgruntled Republican smart aleck of the Communications Commission.
>
> I hold no brief for Mr. Frank R. McNinch. Back in the Hoover administration I appeared before the Senate committee in opposition to his confirmation, and I made some very caustic remarks at that time about the gentleman. We were mad then in North Carolina; a political question was involved, and we attributed most of our troubles at that time to Mr. McNinch. . . .
>
> But I never have, nor has any human being to my knowledge ever, impugned the lofty character or the high integrity of Mr. Frank R. McNinch. Everyone knows that last August the President himself realized that there was trouble in the Communications Commission, and he drafted Mr. McNinch and transferred him as the chairman of that commission temporarily to clean up the situation. He has done a fine job. If you do not believe it, look into the record and see what he has accomplished up to date. It is my prediction that, acting under the orders of the President, he will clean up any bad or undesirable situation that might exist there. . . .

That the experienced Representative O'Connor could "smell" the outcome is evidenced in his following remarks made just prior to the vote:

> . . . The fundamental question is this. Honest men do not fear investigations. There is a division in this Communications Commission as to whether there should be an investigation. Two commissioners voted to have a congressional investigation. The situation is not much different from the TVA which we voted here. It is an internal family row—with scandal in it.
>
> The distinguished gentleman from North Carolina (Mr. Warren) has said that no lobbyists talked to him. Well, he is a rare creature in this House, and, of course, I believe him. There has not been a department of the government, high or low, that has not been interested in blocking this investigation, and let me say here now that the only man I can think of in the government at this moment, and I talked to him today, who has not "stuck his chin out" on this matter and has taken no part in it, is our great Postmaster General, Mr. Farley.
>
> Now, why is there all this pressure and all this lobbying against an investigation by the House of Representatives, which must draft the legislation to cure this situation?

The Radio Commission itself admits that it has been busy issuing licenses, some 600, and has not adopted a policy as to the control of the licensees.

The distinguished gentleman from Georgia (Mr. Cox) said this is my "baby." I never introduced the resolution. I was at times accused of "blocking the resolution." It has been before the Rules Committee for two years. The Rules Committee by a decisive vote directed me to report it. My obligation and duty to the House is that this resolution is on the House Calendar, and if it is defeated by Democratic votes it is all right with me, but sad for our party. . . .

* * * *

THE independent telephone industry is still anxiously concerned over whether the new wage-hour law will be applied to them. If it is, some 6,000 exchanges operating with gross annual revenues of less than $10,000 a year are going to be hard put to scratch up enough money to cover twenty-four hour service of even a single central operator, since the statutory minimum wage for such service would be over $3,500 a year.

The little independents are not sure whether the law applies to them at all, in view of the restricted definition of "commerce" (interstate) contained in the law, as compared with the "commerce" definition in the older National Labor Relations Act, which includes a jurisdictional Shreveport clause ("affecting interstate commerce").

Washington legal observers are slightly inclined to the view that the wage-hour act as a whole will be applied to any "communication" business which does any interstate business at all, however slight. This would include practically all of the little independents on account of their long-distance toll connections. But even assuming the act as a whole is applicable as a matter of legal principle, these same legal observers think there is a good chance that the little independents will be exempted as a matter of practical administration.

The basis for this solution is the somewhat mysterious phrase which occurs in 13a(2) of the new law which says that the wage and hour provisions "shall not apply with respect to . . . any employee engaged in any retail or service establishment the greater part of whose selling or services is in intrastate commerce."

The little independents are hoping for the best and it would seem that if those in control of the administration of the wage-hour act are practical in their approach they will see the grave danger of a boomerang, that might result from a strict application of the law to the small local exchanges. Curtailment of service at the expense of the subscribing public, or curtailment of operating force through the instalment of remote control equipment, would certainly not carry out the intention of the act. Yet it is difficult to see how some of the little phone concerns could keep afloat except by such retrenchments, if additional labor pressure is put upon them.

For the present, these small local companies are in a somewhat uncertain spot. The wage-hour law will be applied to the telephone industry by an advisory "industrial committee," as provided by the act. But the independents don't know whether to seek representation on such a committee on the theory that the law will be applied to them, or ignore it on the theory that the less notice they attract, the less the likelihood of the law being enforced against them.

* * * *

TELEPHONE executives witnessed with mixed emotions the silent death of a bill to prohibit the use of communication facilities for criminal purposes. This bill had passed first the Senate and then the House, but substantial differences made a conference necessary. Before the conference could bring in its report, Congress was already engulfed in the perennial log jam of eleventh hour legislation. Somehow or other the "wire tapping" bill, as it was called, was lost in the shuffle and died with the session.

If one were to dig deep enough, an explanation might be found in the charge of some of the bill's critics that it was slipped through the lower house without adequate notice or discussion. An attempt was actually made by Representative Wolcott (R.), of Michigan, on June

16th (the day after the House action) to have the bill recalled but unanimous consent was denied upon objection by Representative Pearson (D.), of Tennessee.

It may be, therefore, that the administration leaders, knowing that certain members (not all Republicans by any means) were gunning for the conference report, were afraid to jeopardize adjournment by the possibility of a last minute row over such a relatively insignificant matter.

In any event, so died the wire-tapping bill which Edgar Hoover, G-man chief, and his supporters in Congress had nursed so carefully over all but the last legislative hurdle. The bill will probably pop up again in the next Congress, but so also may a lot more Republicans, so the outlook is not entirely optimistic.

What complicates the outlook is the unexpected manner in which wire tapping seems to be building up as a prime political issue in the gubernatorial race this fall in New York state. There, strangely enough, it is the Democrats who profess grave fear of possible invasion of civil rights and want to write into the state Constitution a law outlawing the use of wire-tapping evidence in the state courts.

Nobody was paying very much attention to this wire-tapping wrangling at Albany until the Republicans decided that it would be a good stunt to have their vice and racket crusading hero, District Attorney Thomas L. Dewey, come out against the plan as paralyzing the arm of law enforcement. Dewey did so in such an effective manner that it became necessary for Governor Lehman to reply. That joined the issue so emphatically that if Dewey should run as Republican candidate for governor this fall, wire tapping will be a leading campaign topic.

COMING back to the Federal bill, few congressmen would object to the G-men only having authority to tap wires and to use the evidence in Federal courts (a practice now prohibited by the Supreme Court decision in Nardone *v.* United States, 58 Sup. Ct. 275). What they did object to was the broad language of the bill which would allow the "heads of any executive department or independent establishment of the United States," upon reasonable belief "that a violation of any criminal law of the United States, the enforcement of which is under his supervision, may have occurred," to make out a certificate to that effect and go ahead with his wire tapping. Evidence thereby obtained could then be used in the Federal courts. As stated in the *Congressional Record*:

> MR. FISH. This is so fundamental and so important that I should like to know how extensive it is. If this applies just to Edgar Hoover's investigating bureau that might be one thing. This practice may be necessary in kidnaping and other cases. However, if this practice is going to be extended all over the government and the executive departments or anyone else allowed to use wire tapping for any purpose they desire, then I shall be opposed to the proposition. I should like a clear explanation of this matter.
>
> MR. LEA. I have not the text of the bill in my hand, but I believe if the gentleman will refer to the text he will find it applies to the departments of the government charged with the responsibility of enforcement of the law, and to them only.
>
> MR. O'CONNOR of New York. These departments all enforce their own laws. The WPA has an investigating bureau.
>
> MR. FISH. Mr. Ickes has a very famous or infamous, investigating bureau.
>
> MR. LEA. They are not included. This applies only to the agencies charged with enforcement of the law. The investigating agencies are not included.

There are a number of people who are not as sure as Representative Lea that Secretary Ickes would not come under the law. Among these were the telephone executives who despise wire tapping officially and unofficially with all their hearts. Hence their mixed emotions concerning the fate of the bill. In one way, it would have at least made it necessary for a Federal official to make a specific certification before asking telephone companies to "coöperate." This would relieve phone companies of the unpleasant responsibility. On the whole, phone men are probably just as well satisfied with the way the matter turned out.

Financial News and Comment

By OWEN ELY

The Federal Spending Program

Now that the "twelve billion dollar" Congress has adjourned, leaving the administration free to spend four billions in a drive to speed economic recovery, the question again arises as to how soon the pump priming can take effect. In addition to the $3,750,000,000 earmarked for relief-recovery, there are other large amounts available. Secretary of War Woodring has apportioned more than $100,000,000 of flood-control appropriations to projects throughout the country, and the PWA is ready to release large funds to hundreds of municipalities. Since much of the red tape on the latter projects has already been taken care of (many were left-overs from the former program), the time required to "start the dirt flying" may be somewhat less than anticipated. The $459,401,000 War Department bill and the $546,866,000 Navy Department budget are the largest during peace time. The permanent appropriations for Social Security are increased nearly $1,000,000,000 because of the new trust fund setting up state money apart from the Federal government's.

The vast farm-aid program apparently includes $212,000,000 for parity payments, $500,000,000 for soil conservation, and a regular appropriation of $486,605,000. The exact total, while difficult to compute, will be the largest on record.

The Seventy-fifth Congress has appropriated a total of $21,656,000,000, this year's outlay exceeding last year's by nearly $3,000,000,000. It is estimated that a deficit of $8,000,000,000 may be rolled up in the fiscal year ending next June, which might necessitate a national debt of $45,000,000,000. The sharp decline in income tax receipts which appears likely next year will doubtless require a huge amount of "deficit" financing (see accompanying chart, page 34).

Wall Street until recently remained skeptical regarding the inflationary possibilities of the new program. Much will doubtless depend upon the pressure exerted by Mr. Roosevelt and his lieutenants to "get the money out," and how much resistance will be encountered in the natural delays incident to bureaucratic red tape. Certainly the nearness of the fall elections provides an incentive for speed.

PWA spending effects should not be minimized, especially in view of the current low levels of activity. According to Arthur Krock in *The New York Times:*

> In the four years from July, 1933, to June, 1937, PWA placed orders for materials amounting to more than $1,700,000,000. Nearly every line of industry in the United States shared. . . .
>
> The PWA has calculated what will be provided by a $500,000,000 non-Federal works program on a 45 per cent Federal grant basis. According to the agency, the totals are: 488,829,600 man-hours of site employment; 1,222,074,000 man-hours of indirect employment; $412,023,000 expenditures for employment at the site, and $810,000,000 in material orders. Its further calculation is that these purchases will be divided as follows: iron and steel, $228,450,000; foundry and machine shop products and machinery, $109,350,000; lumber and millwork, $59,100,000; cement, $38,850,000; concrete products, $38,100,000; brick, tile, etc., $33,150,000; heating materials, $24,300,000; plumbing materials, $21,900,000, and other materials, $256,800,000. . . .
>
> It makes a handsome showing. It brings to the ear of fancy the sound of picks falling, shovels and dredges biting, factory wheels whirring, freight trains clacking over

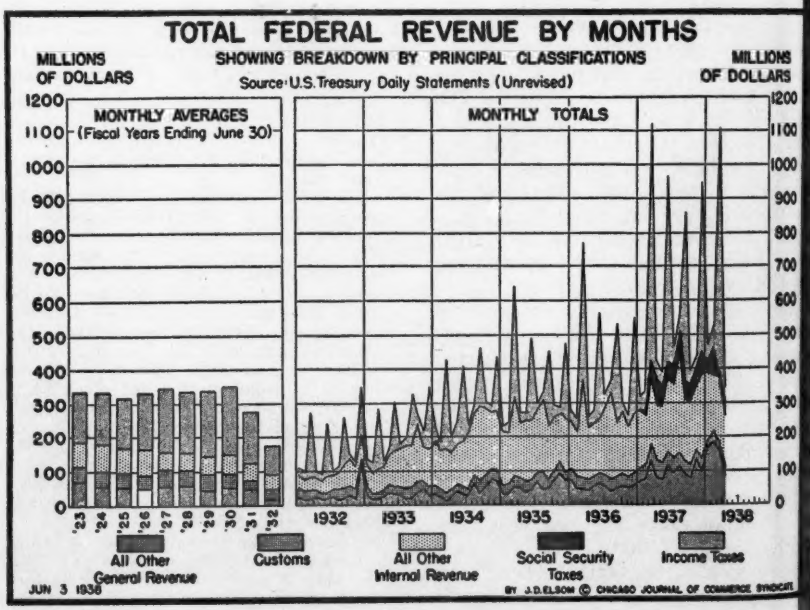
the rails—all the prosperous racket of a busy people. It may not lay the solid economic floor the nation requires, and such foundation as it lays will necessarily be slow. But broken down into these hopeful statistics, the program persuaded the President to try it. There is perhaps some value in examining the figures that won the argument to reopen PWA.

New Utility Financing

THE issue of $27,750,000 Mountain States Telephone & Telegraph Company debenture 3¼s of 1968 on June 10th met with the same success as other recent large offerings. Demand for the issue was so large as to force almost immediate closing of the syndicate's subscription books, it was reported. A premium of ¾ over the offering price was bid for the bonds during the first day's trading. While the continued popularity of new offerings is expected to stimulate negotiation on many other refunding proposals, no new issues are immediately in the offing, with the exception of $2,522,000 Rochester Gas & Electric 3½s.

Southwestern Bell Telephone Company will probably be the next member of the Bell System to do some major financing. It is thought that the company probably wishes to clear up its current debt to American Telephone and Telegraph Company and to the system pension funds, which total nearly $12,000,000. The company enjoys a high credit standing as indicated by the current price for the 3½s over 109, compared with the offering price in December, 1935, of 102½. A 3 per cent coupon seems indicated by the company's application to the Missouri Public Service Commission. Southwestern is the second largest of the Bell companies.

Gatineau Power Company offered $10,000,000 5 per cent sinking fund debentures due 1949 in Canada June 15th, the group being headed by Dominion Securities Corporation. The issue was priced at 98 to yield 5.25 per cent. Each bond bore a detachable warrant for the purchase of 10 shares of common stock at $10 a share before December 31, 1942. Serial debentures to the amount of $3



000,000, representing the balance of the issue, have already been sold.

New York Steam Corporation and Consolidated Edison have applied to the public service commission for authority to issue $32,000,000 Steam Company bonds with interest at not over 3½ per cent and maturing in not more than twenty-five years, principal and interest being guaranteed by Consolidated Edison. The issue is for refunding purposes. The fact that the issue is merely guaranteed by Consolidated Edison may prevent a lower coupon than 3½ per cent, since the guaranteed Westchester Lighting Company 3½s are now selling around 102 despite the fact that Westchester itself earned its charges nearly twice in 1937 while New York Steam failed to cover its charges fully (although they would be covered nearly 1½ times after the new financing).

An issue of $32,000,000 Indianapolis Power & Light first mortgage bonds and $6,000,000 serial notes is expected to be ready for registration about July 10th. Lehman Bros. will be the principal underwriters. Ohio Power Company is also said to be discussing a refunding program of substantial proportions.

Relaxing of the rules for Federal Reserve member banks governing the purchase of bonds, to be ordered by the Comptroller of the Currency in connection with revised bank examination rules, is expected to increase the offering of small bond issues. It seems probable this will apply more to local industrial offerings than to utility financing, although it may benefit some small local utilities which remain unconnected with large systems. The revised regulations will not require any public distribution of the bonds, but merely that they be issued by an established company with demonstrated ability to amortize the issue. The regulation requiring bonds to have an established market, permitting ready sales at intrinsic values, is also being relaxed, the new rule only requiring that the bonds shall be salable within a reasonable time and at a fair price.

It has become increasingly the practice to sell large blocks of bonds directly to institutions, a recent example being the Consolidated Gas of Baltimore financing. Presumably the Comptroller's new rules will increase the sale of small new issues to banks. One observer has pointed out, however, that a defect in all private financing is that the companies may be prevented from making future sinking fund purchases in the open market at advantageous prices during periods of declining bond prices.

New Approach to Traction Unification Problem in New York

Representatives of the New York city administration and the transit commission, now coöperating for the first time to develop a traction unification program, are seeking an early agreement with spokesmen for the Interborough, Manhattan, and B.-M. T. companies. The group conducting the negotiations consists of Mayor LaGuardia, Chairman Delaney of the board of transportation, Chairman Fullen of the transit commission, Comptroller Joseph D. McGoldrick, and Council President Newbold Morris. The B.-M. T. negotiators are Gerhard M. Dahl, Harvey D. Gibson, and George V. McLaughlin. According to the mayor, "preparations are now under way to pick up the Interborough as soon as we make sufficient headway with the B.-M. T."

Thus far about the only tangible result has been the city's agreement with a committee of Manhattan Railway bondholders for the sale of the Sixth avenue elevated line to the city for $12,500,000, with the cancellation of the city's lien for some $9,000,000 unpaid Manhattan taxes as part of the consideration. B.-M. T. representatives are said to be reluctant to name a definite price until assured that the Constitutional Convention now in progress will authorize the city to issue transit bonds outside of its debt limit.

It is not clear yet, however, whether the mayor will have "clear sailing" with the Constitutional Convention. James

M. Dinnes, representing the citizens' budget commission, gave the convention committee at a public hearing his breakdown of figures presented to him by Chester W. Cutthell for the transit commission. The figures showed that the city would just about break even in a unification deal if it paid the private companies $320,000,000 in 3 per cent bonds for their property. Using the Cutthell memorandum (not intended for public release), Mr. Dinnes mentioned a tentative price of $170,000,000 for the B.-M. T. and $150,000,000 for the I. R. T., and claimed that the city would lose money on the basis of these prices and that the total would have to be reduced $50,000,000 to break even on carrying charges, despite the fact that New York can now finance at the lowest interest rates in many years.

However, this interpretation was denied by Mr. Cutthell, who felt that the $320,000,000 total would permit an "even break." It was emphasized, however, that the figures were preliminary.

A new group, said to represent about $1,000,000 bonds of the Manhattan Railway, has renewed an earlier effort to obtain an RFC loan for the elevated lines. The new group claims that the first protective committee, headed by Van S. Merle-Smith, represented only about 37 per cent of the bondholders and that the remaining 63 per cent needed protection. The RFC loan, being sought by Rayford W. Alley, whose brother was former general counsellor of the RFC, would probably amount to $12,000,000 and if granted would give the government a first mortgage on the elevated lines.

Latest developments include (1) granting of permission by the Federal court to the Interborough to cancel the Manhattan lease (which will doubtless be carried to the Supreme Court) and (2) announcement that Interborough would have to default on sinking fund payments July 1st.

Need for Equity Financing

PRESIDENT Charles W. Kellogg of the Edison Electric Institute in a recent address before the annual conference of the Southeastern Electric Exchange ex pressed the hope that the holding com pany problem can soon be settled so as restore investors' confidence and pa the way for equity financing of the ne utility construction boom. Mr. Kello stated that since the early days the uti ties built up an investment rating of th highest order and up to 1930 had deve oped a financial structure showing the whole a very moderate and conserva tive ratio of debt to property value an hence had raised huge sums based o the stock equities in the properties. H credited the holding companies with rai ing the common stock money for 60 p cent of the industry.

Government attacks on the holdin companies, Mr. Kellogg said,

> have frightened away equity investo from the part of the utility field affecte However, since 1930 the relative magnitu of new capital requirements has been su that sufficient money for equity financi has been largely available from current r serves. It is hoped that by the time the ne great expansion period arrives the holdi company matter will have been so settl that these great sources of equity mon for their controlled companies may be al to resume that function which they pe formed with such complete success duri the last great expansion period from 19 to 1930.

IN some cases equity financing is ne essary for other reasons than to mai tain a balanced capital structure. R cently, one of the Consolidated Edis units (New York & Queens Electr Light & Power) went before the publ service commission and explained a pr ferred stock issue. The company w seeking to restore its bonds to the leg for-savings-bank list from which th dropped when an additional issue w sold privately to insurance companie The law requires that capital stock sh be equal to at least two-thirds of a com pany's mortgage debt if the bonds are qualify as legal investments.

The New York Public Service Co mission has approved a certificate fil by Consolidated Edison Company to i crease its authorized common stock

,000,000 shares, to 17,000,000. The ompany apparently does not expect to ssue the stock immediately but wishes to e in a position to obtain funds by sale f stock when a favorable opportunity rrives. According to press comment, he stock will probably not be marketed nder $50 a share, which is approxiately double the present level.

Some time ago American Water Works & Electric Company made tentative plans for an issue of common stock, ut in that case also the offering price hich the company was willing to conider was well above the prevailing price, nd the disparity is now much greater wing to the decline in the company's arnings.

Unless utility executives are willing to ermit some dilution of stockholders' quities and to take a "realistic" view of he current market situation, it seems oubtful whether there will be any imortant equity financing for some time o come.

Corporation Notes

THE Northern States Power Company of Minnesota, the Northern States Power Company of Delaware, nd the Northern States Power Company of Wisconsin (Standard Gas and Electric Company system) have filed ith the Securities and Exchange Commission applications covering a series of ransactions designed to eliminate intercompany debts. The Northern States Power Company of Delaware controls oth the Minnesota and Wisconsin companies of the same name.

El Paso Electric Company, Texas subidiary of Engineers Public Service ompany, is now threatened with competition from the Elephant Butte (N. M.) Federal power development on the Rio Grande. The $4,500,000 project was riginally intended for irrigation but roved impracticable for that purpose, nd Congress has now appropriated 500,000 to install power generating failities with an annual output of 90,000,000 kilowatt hours. El Paso's system sold about 113,000,000 kilowatt hours last year.

Massachusetts Utilities Associates, subsidiary of the New England Power Association, has asked the SEC for permission to issue $4,000,000 unsecured 2½ per cent notes due in two years, mainly for refunding purposes.

Residents of New Jersey have opposed an 8-cent fare on the downtown branch of the Hudson & Manhattan Railroad, recommended by an examiner of the ICC, with the statement that "any action which reduces patronage is suicidal." It is estimated that 15 per cent of the traffic would be diverted, reducing the volume to the lowest for any year of record. The commuters claim the railroad "is not economically and efficiently managed." The railroad presented a brief supporting its claim for a 10-cent fare.

The struggle between Associated Gas & Electric Company and Public Service Corporation of New Jersey for control of Jersey Central Power & Light Company should come to a head in the next few months when bids at public auction will be made for the block of stock representing 68 per cent control, now held as collateral for the National Public Service debentures. Associated, which holds the balance of the common stock together with a substantial amount of the National Public Service debentures, has sought to have the collateral distributed pro rata to the bondholders. Public Service Corporation first offered $5,000,000 and later $8,000,000 for the block of stock, while it is understood that Associated Gas may be willing to bid $9,000,000 if it can obtain permission from Federal and state authorities to do so. Associated has maintained an open bid of $45 for the bonds (corresponding to the $9,000,000 figure) but this expired June 23rd, it was reported. Associated wants the property to serve as a tie-in between its Pennsylvania and Staten Island properties.

INTERIM EARNINGS STATEMENTS

	No. of Months Included	End of Period	System Earnings per Share (a) Last Period	Previous Period	Per Cent Increase	Per Cent Decrease
Electric and Gas						
American Gas & Electric	12	Apr. 30 (b)	$2.31	$2.29	1%	..
American Power & Light (Pfd.)	12	Apr. 30	6.30	6.06	4	..
American Water Works	12	Mar. 31	.83	1.62	..	49%
Boston Edison	12	Mar. 31	8.44	8.69	..	3
Cities Service P. & L. (Pfd.)	6	Mar. 31	11.08	11.88	..	7
Columbia Gas & Electric	12	Mar. 31	.59	.36	64	..
Commonwealth Edison	3	Mar. 31	.71	.75	..	5
Commonwealth & Southern (Pfd.)	12	May 31 (b)	8.53	10.28	..	17
Consolidated Edison, N. Y.	12	Mar. 31	2.81	2.48	12	..
Consolidated Gas of Baltimore	12	Mar. 31	4.46	4.50	..	1
Detroit Edison	12	Apr. 30	6.27	8.43	..	26
Electric Power & Lt. (1st Pfd.)	12	Apr. 30	10.30	11.69	..	12
Inter. Hydro-Electric (Pfd.)	12	Mar. 31 (c)	13.03	10.28	27	..
Long Island Lighting (Pfd.)	12	Mar. 31	5.06	8.92	..	43
Middle West Corp.	3	Mar. 31	.11	.06	83	..
National Power & Light	12	Mar. 31 (c)	1.34	1.08	24	..
Niagara Hudson Power	12	Mar. 31	.72	.78	..	8
North American Co.	12	Mar. 31	1.45	1.89	12	23
Pacific Gas & Electric	12	Mar. 31	2.67	2.75	..	3
Public Service Corp. of N. J.	12	Apr. 30 (b)	2.44	2.74	..	11
Southern California Edison	12	Mar. 31	2.10	2.43	..	14
Standard Gas & Elec. (Pr. Pfd.)	12	Mar. 31 (bc)	5.02	8.67	..	42
United Gas Improvement	12	Mar. 31	1.06	1.11	..	5
United Light & Power (Pfd.)	12	Apr. 30	7.95	8.69	..	8
Gas Companies						
American Light & Traction	12	Apr. 30	1.65	1.86	..	11
Brooklyn Union Gas	12	Mar. 31 (c)	2.23	3.20	..	30
Lone Star Gas	12	Mar. 31 (c)	.97	.97	..	..
Pacific Lighting	12	Mar. 31	3.32	4.71	..	30
Peoples Gas Light & Coke	12	Mar. 31	2.99	3.79	..	21
United Gas Corp. (1st. Pfd.)	12	Apr. 30 (b)	19.48	25.87	..	24
Telephone and Telegraph						
American Tel. & Tel. (d)	12	Mar. 31 (c)	9.36	9.85	..	5
General Telephone	12	Mar. 31 (c)	1.61	1.58	2	..
Western Union Telegraph	12	Mar. 31 (bc)	.77 (f)	7.35	..	88
Traction						
Greyhound Corp.	12	Mar. 31 (c)	1.72	1.64	5	..
Twin City Rapid Transit	3	Mar. 31	.01	.94	..	99
Systems outside United States						
American & Foreign Power (Pfd.)	12	Mar. 31 (c)	6.88	6.60	4	..
International Tel. & Tel. (e)	3	Mar. 31	.36	.26	39	..

(a) On common stock, unless otherwise indicated following name of company; in some cases, Federal surtax not deducted.

(b) Report also published for month ending same period.

(c) Report also published for quarter ending same period.

(d) Parent company only. The consolidated statement for twelve months ended February 28th showed $9.31, against $10.28 last year.

(e) Excludes Spanish subsidiaries and Postal Tel. & Tel. Co.

(f) For four months ended April 30th there was a net loss of $1,293,829 compared with net income of $1,710,030 last year.

What Others Think

Representative Rankin and the Great Overcharge

For two years Congressman John E. Rankin, of Mississippi, leader of the so-called "power bloc" in the House of Representatives and warm advocate of TVA and all other forms of public ownership of utilities, has used a favorite trick of baiting opponents who try to heckle or otherwise interrupt him on the floor of the House. Instead of yielding to questions, Representative Rankin often taunts his would-be questioner with defending a system of private utility ownership and operation which results in enormous "overcharges" for electricity in whatever state the Representative happens to come from.

The Mississippian does this by comparing state-by-state average rate figures from the Federal Power Commission rate survey with rates for similar quantities of service chargeable under picked low public rate schedules, such as TVA, Tacoma, and Ontario.

It is a common sight to see these "overcharge" slips neatly filed alphabetically according to states, resting on Representative Rankin's desk ready for all comers. Since such an impressive statistical barrage usually catches his opponent unprepared to reply, the Mississippian's extortion rate charges have usually gone unanswered.

Not long ago, however, Representative Rankin, in the course of his remarks, said that the electric consumers in New Jersey were "overcharged" by more than $50,000,000 a year. This accusation came to the attention of the New Jersey Board of Public Utility Commissioners, who felt, reasonably enough, that it was a reflection upon their work. Subsequently, the New Jersey Board issued a statement which took sharp issue with Mr. Rankin.

Speaking for the board, its president, Harry Bacharach, stated:

The figures used by Representative Rankin in his statement are general and since they are not broken down, there is no basis for analysis nor means of ascertaining what figures were used by him as the basis of cost in this state.

Certain things may be noted, however. This board is still bound by the Constitution of the United States. Under that Constitution rates fixed by this board must afford an opportunity to earn a fair return upon the fair value of the property devoted by the companies to the public use. No such constitutional rule binds the Federal government in the fixing of prices for energy supplied from the Tennessee valley project which was created with moneys to which the people of the country as a whole, including this state, contributed through taxes.

It is certain that no franchise taxes are paid by the TVA. We have at the moment no means of determining to what extent, if any, local taxes are paid by the TVA. The franchise and local taxes paid by the companies operating within this state form a substantial part of the revenues of the state.

It is clear also that the TVA pays no taxes upon income, Federal or state, but a substantial proportion of the revenues of the companies of this state go to the Federal government through the imposition of income and corporate taxes.

The people of this state, including the companies, in the imposition by way of taxation which is made upon them, have furnished and are furnishing a substantial proportion of the funds going to the creation and which will go to the extension of the projects of the TVA. If the companies and the people of this state were relieved of the imposition of the burden of meeting through taxes a part of the funds which went and will further go to the establishing and expanding the TVA project, a contribution which they are forced to make for the benefit of the people of another section of our land, the rates for electric energy in this state might be correspondingly reduced. A single company of this state pays in taxes on its electric properties in excess of $14,000,000. Approximately one-third of this amount went to the Federal government in taxes of various kinds. The extent to which

these taxes went to enable the Federal government to meet the cost of the TVA projects, we have no means of knowing, but to the extent that they went to this and the people of this state have been compelled to pay through rates for the benefit of those who have the advantage of the TVA project.

The TVA projects were created by the public expenditures, which have been or must ultimately be met by taxation of the people, including the people of this state. The plants of the companies of this state were provided by ordinary investment by the people.

In addition, the companies of this state are required to make contributions to unemployment and to old age pension funds. To what extent the TVA makes provision for these purposes, we do not know, but if provision is made it is voluntary.

The companies of this state are required, out of their revenues, to set aside part thereof to meet annual depreciation. The extent to which the TVA provides for depreciation out of revenues, we do not know.

Apparently the comparison that Representative Rankin makes in no wise takes into account the differential in the wage scales prevailing in this state and the wage scales prevailing in the TVA territory, which wage scales, of course, affect the cost of operation.

Approximately 20 per cent, or $18,000,000 of the gross revenues of electric companies in New Jersey, was paid out in wages. The wage level in New Jersey is considerably higher than the wage level in the TVA territory, and if the same level were maintained in New Jersey it is obvious that a further reduction to the electric consumers could be made but this would be at the expense of the electric company employees.

Gross revenues from electric companies in New Jersey for the year 1937 amounted to $91,654,000, which represented sales to ultimate consumers, exclusive of intercompany sales. Over 20 per cent, or in excess of $18,000,000, went to the various governmental agencies, municipal, state, and Federal, in taxes.

The other costs of operation, maintenance, and depreciation of the utilities in 1937 amounted to over $40,000,000. This would leave a balance of $33,654,000 which is approximately two-thirds of the amount claimed by Representative Rankin to be an overcharge. Inasmuch as the taxes will have to be paid, it is obvious that the overcharge alleged by Mr. Rankin could only be eliminated at the expense of giving no return whatever to the investors and a substantial reduction in wages and other necessary operating charges.

Gross reductions in electric rates effected by the commission during the period mentioned are $12,041,000 a year and not $9,200,000 as stated by Representative Rankin. Based upon his method of calculation, the consumers of electric energy in New Jersey paid in 1937 approximately $37,360,000 less for service than would have been the case if the 1932 average price had continued.

No reply by Mr. Rankin had been generally published up until the adjournment of the recent session of the 75th Congress. However, it may interest commissions in other states to know that there appeared in the *Congressional Record* of May 28th a complete state-by-state list of "overcharges" in the matter of electric rates. This list, which appeared as an extension of the remarks of Mr. Rankin on the floor of the House included the following passages by the Representative (the statistical details of local rate schedules are omitted):

ALABAMA: No wonder the example of the TVA yardstick has forced rate reductions in Alabama amounting to $3,800,000 a year, and the people of that state are still overcharged every year $6,778,870, according to the TVA rates; $7,146,599, according to the Tacoma rates; and $8,367,842, according to the Ontario rates.

ARIZONA: These are the reasons that rates have been reduced in Arizona $750,000 a year. And the people of Arizona and New Mexico together are still overcharged every year $5,874,189, according to the TVA rates; $6,122,144, according to the Tacoma rates, and $6,875,027, according to the Ontario rates.

ARKANSAS: This deadly parallel has forced rates in Arkansas down $1,700,000 a year—and we have just started. And the people of Arkansas are still overcharged every year $5,540,389, according to the TVA rates; $5,608,468, according to the Tacoma rates; and $6,572,934, according to the Ontario rates.

CALIFORNIA: No wonder California rates have come down $16,600,000. The Boulder dam yardstick applies in that area. Still, however, the people of California are overcharged every year $57,591,592, according to the TVA rates; $55,456,104, according to the Tacoma rates; and $69,824,595, according to the Ontario rates.

COLORADO: The Boulder dam yardstick has helped greatly in reducing rates in Colorado to the amount of $2,500,000 a year. But the people of Colorado are still overcharged every year $7,957,666, according to the TVA rates; $7,993,109, according to the Tacoma rates; and $9,405,579, according to the Ontario rates.

The Providence Journal

"MAKE UP YOUR MIND, OFFICER"

CONNECTICUT: Rate reductions in Connecticut since the creation of the TVA now amount to $5,800,000 a year; and still the people of Connecticut are overcharged every year $17,-776,561, according to the TVA rates; $18,-221,232, according to the Tacoma rates; and $20,871,308, according to the Ontario rates.

DELAWARE: Rate reductions in the state of Delaware, since the creation of the TVA, amount to $302,000 a year, and still the people of Delaware, Maryland, the District of Columbia, and West Virginia are overcharged $28,-771,000 a year, according to the TVA rates; $30,490,000, according to the Tacoma rates; and $35,425,000, according to the Ontario rates.

FLORIDA: Rate reductions in Florida since the creation of the TVA now amount to $5,-900,000 a year. And still the people of Florida are overcharged every year $11,939,733, according to the TVA rates; $11,684,991, according to the Tacoma rates; and $13,679,913, according to the Ontario rates.

GEORGIA: Rate reductions in Georgia since the creation of the TVA now amount to $3,-800,000 a year; and still the people of Georgia are overcharged every year, $10,616,087, according to the TVA rates; $11,292,013, according to the Tacoma rates; and $13,170,549, according to the Ontario rates.

IDAHO: Rate reductions in Idaho since the creation of the TVA have amounted to $1,-500,000 a year, and yet the people of the state are still overcharged $3,157,795, according to the TVA rates; $3,290,993, according to the Tacoma rates; and $3,819,921, according to the Ontario rates.

ILLINOIS: Rate reductions in Illinois since the creation of the TVA amount to $32,800,-

000 a year; and still the people of that state are overcharged every year $66,460,000 according to the TVA rates; $68,655,000, according to the Tacoma rates; and $81,359,771, according to the Ontario rates.

INDIANA: Rate reductions in Indiana since the creation of the TVA amount to $10,300,000 a year; and still the people of that state are overcharged every year $22,108,000, according to the TVA rates; $21,904,000, according to the Tacoma rates; and $26,362,000, according to the Ontario rates.

IOWA: Rate reductions in Iowa since the creation of the TVA amount to $3,400,000 a year; and still the people of that state are overcharged every year $14,908,000 according to the TVA rates; $14,279,000 according to the Tacoma rates; and $17,253,000, according to the Ontario rates.

KANSAS: Rate reductions in Kansas since the creation of the TVA amount to $2,400,000 a year; and still the people of that state are overcharged every year $11,122,000 according to the TVA rates; $11,078,000, according to the Tacoma rates; and $13,243,000, according to the Ontario rates.

KENTUCKY: Rate reductions in Kentucky since the creation of the TVA amount to $3,400,000 a year; and still the people of that state are overcharged every year $9,690,000, according to the TVA rates; $9,967,000, according to the Tacoma rates; and $11,657,000, according to the Ontario rates.

LOUISIANA: Rate reductions in Louisiana since the creation of the TVA amount to $1,800,000 a year; and still the people of that state are overcharged every year $9,571,000, according to the TVA rates; $9,850,000, according to the Tacoma rates; and $11,242,000, according to the Ontario rates.

MAINE: Rate reductions in Maine since the creation of the TVA amount to $1,000,000 a year; and still the people of that state are overcharged every year $7,096,000, according to the TVA rates; $7,281,000, according to the Tacoma rates; and $8,327,000, according to the Ontario rates.

MARYLAND: Rate reductions in Maryland and the District of Columbia since the creation of the TVA amount to $6,800,000 a year. (No overcharge alleged.)

MASSACHUSETTS: Rate reduction in Massachusetts since the creation of the TVA amount to $14,800,000 a year; and still the people of that state are overcharged every year $45,942,000 according to the TVA rates; $46,650,000 according to the Tacoma rates; and $54,066,000 according to the Ontario rates.

MICHIGAN: Rate reductions in Michigan since the creation of the TVA amount to $7,300,000 a year; and still the people of that state are overcharged every year $37,335,000, according to the TVA rates; $38,435,000, according to the Tacoma rates; and $46,590,000, according to the Ontario rates.

MINNESOTA: Rate reductions in Minnesota since the creation of the TVA amount to $2,800,000 a year; and still the people of that state are overcharged every year $16,403,000, according to the TVA rates; $16,476,000, according to the Tacoma rates; and $19,661,000, according to the Ontario rates.

MISSISSIPPI: Rate reduction in Mississippi since the creation of the TVA amount to $1,700,000 a year; and still the people of that state are overcharged every year $4,667,000, according to the TVA rates; $4,940,000, according to the Tacoma rates; and $5,644,000, according to the Ontario rates.

MISSOURI: Rate reductions in Missouri since the creation of the TVA amount to $6,000,000 a year; and still the people of that state are overcharged every year $23,408,000, according to the TVA rates; $22,554,000, according to the Tacoma rates; and $28,005,000, according to the Ontario rates.

MONTANA: Rate reductions in Montana since the creation of the TVA amount to $2,000,000 a year. (No overcharge alleged.)

NEBRASKA: Rate reductions in Nebraska since the creation of the TVA amount to $2,500,000 a year; and still the people of that state are overcharged every year $8,579,000, according to TVA rates; $8,369,000, according to the Tacoma rates; and $9,686,000, according to the Ontario rates.

NEVADA: Rate reductions in Nevada since the creation of the TVA amount to $115,000 a year; and still the people of that state are overcharged every year $1,106,000, according to the TVA rates; $1,183,000, according to the Tacoma rates; and $1,344,000, according to the Ontario rates.

NEW HAMPSHIRE: Rate reductions in New Hampshire since the creation of the TVA amount to $1,200,000 a year; and still the people of that state are overcharged every year $4,897,000, according to the TVA rates; $4,949,000, according to the Tacoma rates; and $5,394,000, according to the Ontario rates.

NEW JERSEY: Rate reductions in New Jersey since the creation of the TVA amount to $9,200,000 a year; and still the people of that state are overcharged every year $50,488,000, according to the TVA rates; $51,365,000, according to the Tacoma rates; and $57,442,000, according to the Ontario rates.

NEW MEXICO: Rate reductions in New Mexico since the creation of the TVA amount to $900,000 a year; and still the people of

New Mexico and Arizona are overcharged every year $5,874,000, according to the TVA rates; $6,122,000, according to the Tacoma rates; and $6,875,000, according to the Ontario rates.

NEW YORK: Rate reductions in New York since the creation of the TVA amount to $33,700,000 a year; and still the people of that state are overcharged every year $160,905,000, according to the TVA rates; $164,656,000, according to the Tacoma rates; and $190,237,000, according to the Ontario rates.

NORTH CAROLINA: Rate reductions in North Carolina since the creation of the TVA amount to $2,000,000 a year; and still the people of that state are overcharged every year $12,120,000, according to the TVA rates; $13,629,000, according to the Tacoma rates; and $14,993,000, according to the Ontario rates.

NORTH DAKOTA: Rate reductions in North Dakota since the creation of the TVA amount to $600,000 a year; and still the people of that state are overcharged every year $2,845,000, according to the TVA rates; $2,614,000, according to the Tacoma rates; and $3,329,000, according to the Ontario rates.

OHIO: Rate reductions in Ohio since the creation of the TVA amount to $27,700,000 a year, and still the people of that state are overcharged every year $50,258,000, according to the TVA rates; $51,644,000, according to the Tacoma rates; and $61,783,000, according to the Ontario rates.

OKLAHOMA: Rate reductions in Oklahoma since the creation of the TVA amount to $1,900,000 a year; and still the people of that state are overcharged every year $11,111,000, according to the TVA rates; $11,566,000, according to the Tacoma rates; and $13,201,000, according to the Ontario rates.

OREGON: Rate reductions in Oregon since the creation of the TVA amount to $2,600,000 a year; and still the people of that state are overcharged every year $7,813,000, according to the TVA rates; $7,758,000, according to the Tacoma rates; and $9,554,000, according to the Ontario rates.

PENNSYLVANIA: Rate reductions in Pennsylvania since the creation of the TVA amount to $35,300,000 a year; and still the people of that state are overcharged every year $85,410,000, according to the TVA rates; $91,891,000, according to the Tacoma rates; and $104,899,000, according to the Ontario rates.

RHODE ISLAND: Rate reductions in Rhode Island since the creation of the TVA amount to $2,200,000 a year; and still the people of that state and Vermont are overcharged every year $11,209,000, according to the TVA rates; $11,444,000, according to the Tacoma rates; and $13,118,000, according to the Ontario rates.

SOUTH CAROLINA: Rate reductions in South Carolina since the creation of the TVA amount to $1,000,000 a year; and still the people of that state are overcharged every year $6,040,000, according to TVA rates; $7,084,000, according to the Tacoma rates; and $7,339,000, according to the Ontario rates.

SOUTH DAKOTA: Rate reductions in South Dakota since the creation of the TVA amount to $800,000 a year; and still the people of that state are overcharged every year $3,182,000, according to the TVA rates; $3,110,000, according to the Tacoma rates; and $3,656,000, according to the Ontario rates.

TENNESSEE: Rate reductions in Tennessee since the creation of the TVA amount to $600,000 a year; and still the people of that state are overcharged $10,715,000, according to the TVA rates; $11,181,000, according to the Tacoma rates; and $13,131,000, according to the Ontario rates.

TEXAS: Rate reductions in Texas since the creation of the TVA amount to $7,100,000 a year; and still the people of that state are overcharged every year $31,726,000, according to the TVA rates; $32,451,000, according to the Tacoma rates; and $37,845,000, according to the Ontario rates.

UTAH: Rate reductions in Utah since the creation of the TVA amount to $3,100,000 a year; and still the people of that state and Montana are overcharged every year $8,362,000, according to the TVA rates; $8,736,000, according to the Tacoma rates; and $10,093,000, according to the Ontario rates.

VERMONT: Rate reductions in Vermont since the creation of the TVA amount to $600,000 a year. (For overcharges see Rhode Island.)

VIRGINIA: Rate reductions in Virginia since the creation of the TVA amount to $1,200,000 a year; and still the people of that state are overcharged every year $11,662,000, according to the TVA rates; $12,155,000, according to the Tacoma rates; and $14,011,000, according to the Ontario rates.

WASHINGTON: Rate reductions in Washington since the creation of the TVA amount to $3,600,000 a year; and still the people of that state are overcharged every year $12,615,000, according to the TVA rates; $12,530,000, according to the Tacoma rates; and $15,662,000, according to the Ontario rates.

WEST VIRGINIA: Rate reductions in West Virginia since the creation of the TVA amount to $3,300,000 a year. (For overcharges see Delaware.)

WISCONSIN: Rate reductions in Wisconsin since the creation of the TVA amount to $8,100,000 a year; and still the people of that state are overcharged every year $21,172,000,

according to the TVA rates; $21,134,000, according to the Tacoma rates; and $25,323,000 according to the Ontario rates.

WYOMING: Rate reductions in Wyoming since the creation of the TVA amount to $235,000,000 a year; and still the people of that state are overcharged every year $1,591,000, according to the TVA rates; $1,661,000, according to the Tacoma rates; and $1,871,000, according to the Ontario rates.

As the New Jersey commission observed, Mr. Rankin does not go into details about how he gets his overcharge figures. In his state-by-state statistical data he uses a uniform monthly consumption rate of 1,400 kilowatt hours, which would be 16,800 kilowatt hours a year per customer (as compared with the actual average annual usage per residential customer of 777). By employing such a thumping big monthly consumption per customer figure, which many utility rate schedules were obviously never designed to encounter, Mr. Rankin got some impressive "overcharge" figures per customer, but how he reaches his total "overcharge" state by state is not apparent.

It is interesting to note, however, that if all of Mr. Rankin's "overcharges" for various states (those given above at least) are added together, they give a total annual national "overcharge" of $1,132,210,000. Compare this with the *total gross revenues* received for residential business by the electric light and power industry in 1937, which are $740,218,600 for the entire United States. It would appear, therefore, that according to Mr. Rankin, American electrical consumers *were "overcharged" more than they were actually charged!* Maybe the power companies even owe their customers money for using the service.

F. X. W.

The Bonneville Fishways

It will probably take more than a single year to determine whether the elaborate system of fishways installed in the Bonneville dam is a success. When the annual spring run of salmon started last May, the early reports were very encouraging. Secretary of Commerce Roper on May 18th announced official counts showing that 2,000 salmon had passed the dam by the first ladders on May 9th, and nearly 3,000 on May 10th. Commercial fishermen had already taken 12,000 salmon above Bonneville.

Commercial catches in the Columbia river this year have been lower than usual but officials of the U. S. Bureau of Fisheries insist that the dam is not responsible for the small size of the early runs of fish, and point to the poor fishing downstream as well as upstream.

Conflicting reports, however, came from the Northwest country in mid-June. An Associated Press dispatch published in *The New York Times* of June 16th stated:

> Fishermen who have lived for generations off the Royal Chinook Salmon have expressed fear that the great spring salmon run has vanished from the Columbia river. Above Bonneville dam, the government's $55,000,000 power and navigation project, the Indians at Celilo Falls looked at their empty nets and agreed dejectedly, with Sam Starr:
>
> "Once we used to catch about six tons a year; last year we didn't do so good; this year there are no fish."
>
> Downstream at Astoria, home of a great fishing fleet and a $10,000,000 industry, gillnetters racked their tackle, canneries curtailed operations, and from 200 to 500 trollers sought other fishing grounds.

On June 19th, however, according to a press release from the Department of the Interior, J. D. Ross, Bonneville Administrator, had reported to Secretary of Interior Ickes that the elaborate fishways were a definite success as far as the spring "run" could show. During the month of May, Mr. Ross stated that more than 30,000 fish had "booked passage" on the man-made escalators—reassuring evidence that the barrier at Bonneville will not harm the great Columbia river fishing industry.

The Washington Post

GET FOR HOME

The director of fish culture of the Oregon Game Commission gave as his verdict that the dam's fishways were a howling success."

FOUR years ago when the Public Works Administration approved the proposal for the huge dam, sportsmen and commercial fishermen voiced fears that the fingerlings that slipped down the sea would never be able to return to the upper tributaries of the Columbia. Even the prospect of a giant navigation project that would open the famous river of the West to ocean-going vessels failed to cheer those who gloomily predicted the demise of the salmon. They weighed the contemplated half-million kilowatts of electricity against the threatened loss of a ten million dollar fishing industry.

Never before had so elaborate a fishway been constructed to lead the homebound salmon back to their spawning grounds. The fighting fish could leap a

20-foot falls, but here was a 60-foot wall of concrete. An allotment from the Public Works Administration was provided for the construction of a mammoth—but untried—type of fishway. The War Department and the Bureau of Fisheries collaborated with the game commissions of Oregon and Washington to design a system that would insure the perpetuation of the Columbia river fish that have become a byword at the tables of the nation.

Last September temporary fish ladders were used to escort nearly a quarter of a million fish over Bonneville dam. They readily jumped the 2- and 3-foot rises. The permanent fishways, however, have steps only a foot high. So much water runs through the new ladders that the salmon no longer make their spectacular leaps from pool to pool. They can swim leisurely uphill, scarcely breaking water as they travel.

As an added feature, Federal officials provided a fleet of elevators for salmon that might be reluctant to climb the 75 steps that stretch around the dam for nearly 1,200 feet. These huge lifts are nearly ready to accommodate a capacity of 30,000 fish an hour. But they may not be necessary, for the salmon may adopt the new ladders as readily as they would a mountain stream. If so, they must swim up to Lake Bonneville, where they travel alongside three thousand ton freighters 187 miles inland to The Dalles.

THE Bonneville release stated as follows:

> The main test of the fishways will come next September, when the huge fall "runs" of salmon return to the Columbia. But experts and amateurs are equally optimistic that the returning hordes will have no more difficulty finding their way over the dam than their brothers had this spring. Coming downstream, millions of fingerlings will find the dam a minor obstacle on their journey to the sea. They will slip down the bypass channels, attracted by a discharge of water—white water like the rapids that once surged along the bed of the stream 60 feet below. Huge generators will spin overhead as the baby salmon sweep through the draft tubes, but the largest turbine blades in the world will give them plenty of clearance. A full grown man, in fact, would have an eve chance of going by the blades unscathed.
>
> More than 25,000 fishermen are wagerin their livelihood that Bonneville's fish lad ders will work. Already more than $300,000, 000 worth of salmon have been dipped fro the waters of the Columbia, and weather beaten fishermen are mending their nets fo the fall "run," and for fishing in the year ahead. One thing Bonneville dam has done It has shown exactly how many salmon re turn to the upper stretches of the Columbi to spawn a new generation of fingerlings Careful records are being kept and the fish ery officials of Oregon and Washington wi be able to make plans to preserve forever the famous "runs" which have provide delicacies for the tables of the world an thrilling recreation for sportsmen in th Northwest quadrant of the nation.

The spectacle of spry fish going u man-made ladders with ease and agility while their more indolent brothers an sisters seek out the elevators and ar hoisted to the upper pool in comfort nat urally attracted the attention of engi neers.

THE engineering feat involved is no entirely new. James Williamson consulting engineer of Westminster, Eng land, in the June 2nd issue of *Engi neering News-Record* wrote an interest ing account of the experience at hydro electric plants in Scotland. It would ap pear that the fingerlings pass through th turbines with safety at the Galloway Water Power Scheme on the River De in the southwest of Scotland, which ha been in operation since the spring o 1935. Commenting on the Bonnevill situation, the *News-Record* stated edi torially:

> All of which appears to indicate that th grave fears of the fish experts whose in satiable demands for more and differen fishways increased the cost of fishways t $6,500,000 were unfounded. It is now evi dent that much less elaborate facilities woul have proved adequate. Nor will the youn salmon coming back down to the sea suffe any harm, judged by experience in Scotlan reported in this issue. A valuable experi ment now becomes possible: By taking th fishways at Bonneville out of service pro gressively it should be possible to determin how many fishways are required and wha type and size are best. This should mak possible a reduction in expenditures for fish ways at other dams farther up the Colum

bia, and for that matter on other salmon rivers.

Of course, what is true of the behavior of the Scotch salmon will not necessarily go for the American variety, but if Administrator Ross is right in his contention that Bonneville's salmon problem is "virtually solved," he will silence one of the strongest political arguments that have been made against his project and, in the bargain, contribute substantially to the relatively meager scientific knowledge of salmon behavior.

—F. X. W.

Notes On Recent Publications

A Program for Business-Government Cooperation Under the Holding Company Act. By William O. Douglas. *The Annalist.* June 3, 1938.

The above widely publicized statement by SEC Chairman Douglas contains arresting suggestion that preferred as well as common stockholders should have a voice in the reorganization of public utility holding companies and for that reason may have far-reaching effects. It is believed in some quarters, for example, that the SEC can step in and supervise holding company affairs in addition to reorganizations. Under § 11-B of the Holding Company Act, the commission might intervene in such matters as directorate elections, new stock issues, property acquisition, and other affairs affecting stockholders. The possibility that SEC might place an equal or majority right in the hands of preferred stockholders to avoid undue domination of corporate affairs by common stockholders has caused some deep thinking in financial circles.

Astonishing Truth about City Light. By Ernest C. Potts. *Oregon Voter,* Portland, Ore. From Vols. 91 and 92.

This is a very critical analysis of the record of the Seattle municipal power plant by Ernest C. Potts, financial editor of the *Oregon Voter.* The report goes into considerable detail to indicate that Seattle City Light both before and after the loss of its recent principal promoter, J. D. Ross (now Bonneville administrator), is by no means the shining financial success that official City Light figures would imply. Interesting if true.

Bonneville Dam and Boulder Dam Rates. Extension of remarks of Hon. Charles A. Plumley. *Congressional Record.* February 24, 1938.

Representative Plumley of Vermont has discovered that Boulder dam will pay 4 per cent interest on Federal power investment, whereas Bonneville will pay but 1.54271 per cent interest, according to the recent FPC allocations. He is also critical of the FPC "arithmetic," in view of the larger amount of cost allocated to power under former estimates of the Army Engineers.

British Experiments in Public Ownership and Control. By Terence O'Brien. W. W. Norton & Company, Inc., 70 Fifth Avenue, New York. 1938. 304 pp. $3.00.

Colorado—Big Thompson Project. *Popular Mechanics.* March, 1938.

Debate on the Tennessee Valley Authority. Mutual Broadcasting System, WOR Forum Hour. Addresses by Senator H. Styles Bridges of New Hampshire and Senator Lister Hill of Alabama. March 27, 1938. Washington, D. C.

Electricity—Control and Current. By D. Barrend. *Fortune.* January, 1938.

Feasibility of the Production of Ferro-Alloys in the Columbia River Area. By Raymond M. Miller, Metallurgical Engineer. Published January, 1938, by War Department, Office of the Division Engineer, North Pacific Division, 523 Pittock Block, Portland, Ore. Price 50c. (Mimeographed.)

This report covers the three principal ferro-alloys: ferro-silicon, ferromanganese, and ferrochrome, with a study on the production of the rustless chrome steel group of alloys. It includes a description of the Columbia river area, its transportation facilities, power supply, and available raw materials—ores, coal, coke, scrap iron, fluxes, and electrodes. The methods of production of each group of alloys are briefly described.

Flood Protection in Connecticut. Extension of remarks of U. S. Senator Francis T. Maloney. *Congressional Record.* March 3, 1938.

History of the Gas Industry. By Louis Stotz, Care American Gas Association, New York, N. Y. Single copies $3.50; 10 or more, $3 each. 300 pages, illustrated.

For no apparent reason, there are few good books on the gas industry, which bear even a relatively recent date. This observation does not include, of course, the excellent technical literature covering the engineering phases of the gas industry which have been developed.

Louis Stotz, who has lived most of his adult years with the gas industry, has finally filled the bill. And high time, too, in view of the rapid advance being made in long-distance natural gas transmission and the multitudinous new problems which follow in the train of the modern pipe-line art. (Most of the books on the subject heretofore have stressed the manufactured gas angle.)

Mr. Stotz, in short, has written a "History of the Gas Industry." As the title implies, it is not a book designed solely for technical readers, even though it well merits a place in the library of every informed engineer.

Naturally this will be welcome news to non-engineers who have felt the need for an authoritative historical analysis of this important utility industry, which will soon be rounding out its century and a quarter of development. It is written not only with a fine knowledge of the past, but an alertness to the present, and an eye to the future.

State commissions, lawyers, educators, economists, and professional writers should find Mr. Stotz's book a welcome addition not alone for reference purposes but for interesting and informative page-to-page perusal.

HYDROELECTRIC POWER PHASES OF REGIONAL PLANNING. By David E. Lilienthal. *Congressional Digest.* January, 1938

HYDROELECTRIC POWER—MORE POWER TO YOU. *Current History.* February, 1938.

ISSUES IN THE TVA INQUIRY. By Victor Weybright. *Survey Graphic.* May, 1938.

NEBRASKA'S HYDRO ELECTRIC PROJECTS. By Roy Page. *Public Service Magazine.* May, 1938.

NEW 1937 RAILROAD CHART. Compiled and published by Robert A. Burrows, First National Bank Building, Pittsburgh, Pa. $2 one color and $3 in seven distinctive colors.

Mr. Burrows has built up a national reputation for his skill and accuracy in organizing charts with a graphic portrayal of intercorporate relations in both the railroad and public utility industries. The above chart is the latest Burrows chart showing interrelation, consolidation, and capitalization of principal American railroads as of November 1, 1937. In addition to the features which Mr. Burrows has brought up to date from the last edition, there are a number of new points. Altogether, the chart is an indispensable reference to those who require immediate knowledge of the interrelation of voting stocks, outstanding capitalization, per cent classification of gross revenues, operating and income ratios, share earnings, government loans, trackage operation, receivership, and stock symbols of American lines. The new color scheme is a valuable improvement and seems to be well worth the indicated difference in price to those who have need of such service.

OVER THE DAM WITH *TVA*. By Garet Garrett. *The Saturday Evening Post.* May 7, 1938.

POWER JOKERS IN THE PENDING HOUSE FLOOD CONTROL BILL. By Judson King. National Popular Government League, Takoma Park Station, Washington, D. C. Bulletin No. 186, June 6, 1938.

PRELIMINARY REPORT ON SOME NORTHWEST MANGANESE DEPOSITS, THEIR POSSIBLE EXPLORATION AND USES. By Edwin T. Hodge, Consulting Geologist. Published January, 1938, by War Department, Office of the Division Engineer, North Pacific Division, 528 Pittock Block, Portland, Ore. Price 75c. (Mimeographed, 91 pages, 9 tables.)

This publication describes many of the known low-grade manganese deposits in southwestern Oregon and the Olympic peninsula, Washington, covering both the geology and the grade of the ores found, with analyses. A discussion of the technology of low-grade manganese ore reduction, the uses and market for manganese, the foreign supplies, imports, and domestic statistics is included.

READJUSTING MASS TRANSPORTATION FACILITIES. By John Bauer. *Public Management.* June, 1938.

RECENT DEVELOPMENT IN FEDERAL-MUNICIPAL RELATIONSHIPS. By E. H. Foley, Jr. *86 U. of Pa. L. Rev. 485-516.* March, 1938.

TAPPING THE WIRES. By Meyer Berger. *The New Yorker.* June 18, 1938.

In view of the current legislative interest in wire tapping in Washington and more recently in Albany, this is a timely article on the mechanics of wire tapping and the legal and industrial (telephone industry) complications thereof.

THE NATIONAL RAILROAD ADJUSTMENT BOARD. By William H. Spencer. The University of Chicago Press, 5750 Ellis Avenue, Chicago, Ill. Price $1. May, 1938.

THE PUBLIC CORPORATION IN GREAT BRITAIN. By Lincoln Gordon. *Oxford Press,* New York, N. Y. Price $3.50.

THE REGULATION OF INTERSTATE TELEPHONE RATES. By Carl I. Wheat. *Harvard Law Review.* March, 1938.

THE TENNESSEE VALLEY AUTHORITY. Address of Hon. Andrew J. May over National Broadcasting Company network, April 4, 1938. Reprinted in *Congressional Record.* April 6, 1938.

THE TRAINED MAN AND SECURITIES REGULATION. Address by Hon. William O. Douglas before Yale Club of Washington, Raleigh Hotel, April 27, 1938. Reprinted in *Congressional Record.* May 3, 1938.

THE YANKEE FIGHT FOR CONTROL OF FLOODS. By Charles Morris Mills. *Nation's Business.* May, 1938.

The March of Events

TVA Costs Allocated

PRESIDENT Roosevelt on June 16th submitted to Congress the Tennessee Valley Authority's long-delayed cost allocation figures, recommending that $49,360,179 of the total $94,125,671 cost of the Wilson, Norris, and Wheeler dams be charged to power.

The move was interpreted as the first concrete attempt by the administration to meet charges of private utilities that the lump-sum method of TVA bookkeeping screened the actual cost of power production in the keystone of the New Deal's "yardstick" power rate program.

At a press conference TVA Director David E. Lilienthal explained that the allocation of costs to specific phases of the TVA program merely was a bookkeeping transaction to "set the financial picture so we may know how we are coming out in our operations."

In testing constitutionality of TVA, private utilities claimed that by bookkeeping means TVA officials have assigned excess allocations to other sections of the program, such as navigation and flood control, in order to "visibly" reduce power production cost.

The allocation to power recommended by Roosevelt represents 52 per cent of the total investment in the three huge multiple-purpose projects. He also proposed that $26,294,865, or 28 per cent of the investment, be charged to navigation and $18,470,627, or 20 per cent, to flood control.

The President's recommendations were based on a report of the TVA's committee on financial policy, which found that of the total cost of the three dams, $31,532,120 was invested in Norris, $30,120,009 in Wilson, and $32,473,542 in Wheeler.

The committee reported that $30,643,165 was invested for specific purposes as follows: $2,600,000 for flood control, $4,075,988 for navigation, and $23,967,177 for power. Charged with determining how the remaining $63,482,506 jointly invested in the dams for all purposes should be allocated, the committee recommended that $25,393,002, or 40 per cent, be charged to power, $22,218,977, or 35 per cent, for navigation, and $15,970,627, or 25 per cent, to flood control.

The committee did not provide for any charges to be made against the fertilizer production and national defense features of the program.

The report said TVA engineers estimated that the power revenues from the three projects would be sufficient to cover all costs of operation, including depreciation and 3 per cent interest on the investment allocated to power, and in addition to "return in thirty years the entire investment allocated to navigation and flood control." The allocations were considered as the first step in establishing a yardstick power sale rate, but it was pointed out that ultimate establishment of rate minima depended upon completion of the entire program and not Wheeler, Norris, and Wilson alone.

FPC Lauds Court Decision

ACTING Chairman Clyde L. Seavey, of the Federal Power Commission, recently stated that the work of administrative agencies was closed to one more line of court attack by the refusal of the U. S. Circuit Court of Appeals for the second circuit to secure a direct judicial review of the commission's order denying an application for merger of their operating properties. Mr. Seavey stated:

"In his opinion, Judge Learned Hand points out that as Congress could unconditionally prohibit all mergers, Congress can vest discretion in the Federal Power Commission to make exceptions to the general rule, and this it has done in §203 of the Federal Power Act. The direct judicial review provided in the Act, the court holds, does not extend to negative orders of the commission denying some privilege which Congress has said could be granted by the commission only if it should be satisfied that certain standards have been met.

"Although the Supreme Court has steadfastly refused to review similar orders of the Interstate Commerce Commission, this represents the first decision of a Federal court dealing with a negative order of an agency of Congress upon which review was sought under statute other than the Urgent Deficiencies Act pertaining to direct court review of orders of the Interstate Commerce Commission. The decision of the circuit court recognizes a proper distinction between the judicial functions of courts and the discretionary functions of commissions acting under statutory direction."

The argument of the commission's general counsel, Oswald Ryan, in this case was similar to the arguments which he made in two other cases referred to by Judge Hand in his opinion

—the Metropolitan Edison Company Case, recently decided by the U. S. Supreme Court, and the Carolina Aluminum Company Case, recently decided by the Circuit Court of Appeals for the Fourth Circuit. In both of these cases court review of the commission action was denied.

The commission's order of November 24, 1937, denying the merger application of the two companies pointed out that the proposed transfer would result in the direct ownership and operation of electric properties and facilities located in Vermont by a holding and operating company whose executive offices are in Minnesota and whose nearest other electric facilities are located in Kansas and stated that the proposed transfer would not be consistent with the public interest.

SEC Denies Study of Trusts Expired

THE Securities and Exchange Commission on June 20th ruled that the fact that it had failed to make its report to Congress on the investment-trust study under the Holding Company Act prior to January, 1937, as specified in the law, did not invalidate a continuance of the study beyond that date.

The commission's opinion was stated by Commissioner Robert E. Healy at the opening of the hearing on June 20th into the affairs of the Eastern Utilities Investing Corporation, a subsidiary of the Associated Gas and Electric Company, in denying the company's motion for dismissal of the proceeding.

The first part of the commission's report on the study was sent to Congress just prior to its adjournment, at which time it was announced that instalments of the report would be filed throughout the summer.

Commissioner Healy, answering a charge that the inquiry sought to obtain evidence to bolster a Federal tax claim, told the commission's staff that to see such evidence was "not proper." He assured the company that this was not the intention of the commission.

FPC Approves Bonneville Rates

THE Federal Power Commission on June 10th approved revised rate schedules for the sale of power from the Bonneville dam project on the kilowatt-year basis proposed by J. D. Ross, administrator, with certain changes agreed upon in conferences between the commission and the administrator. Clyde L. Seavey, acting chairman of the commission, said:

"These schedules, we believe, embody the principles set forth by Congress in the Bonneville Act and will allow Administrator Ross to carry out its purpose to encourage the widest possible use of the electric energy generated by the project, to provide reasonable outlets therefor, to prevent the monopolization thereof by limited groups, to insure its operation for the benefit of the general public, and to protect the preferential rights of public bodies and coöperatives."

The schedules provide for "at site" rates for sale of power at the dam and transmission line rates that are uniform over the entire transmission system. Mr. Seavey said both were based on the kilowatt-year charge, which is designed to promote the widest and largest use of electric energy at the lowest possible rates which will yield revenue sufficient to pay all costs of generation and transmission and recover to the government, over a period of years, its investment for power purposes in the project and transmission lines.

The approved schedules are four in number, having been reduced from nine as originally proposed by Administrator Ross. They are as follows: (1) Wholesale Power Rate Schedule A-1 ("At Site" Prime Power); (2) Wholesale Power Rate Schedule B-1 ("At Site" Secondary Power); (3) Wholesale Power Rate Schedule C-1 (Transmission System Prime Power); and (4) Wholesale Power Rate Schedule D-1 (Transmission System Secondary Power).

The rates per kilowatt year for Schedules A-1 and B-1 are $14.50 and $9.50, respectively, the power to be available to private purchasers for their own use but not for resale, and to public bodies, coöperatives, and privately owned electric utilities at 13,800 volts (nominal) for distribution within 15 miles of the power plant. The schedules provide that aggregate contract demands for site power, prime and secondary, may not exceed 20 per cent of the installed generating capacity of the plant.

The rates per kilowatt year for Schedules C-1 and D-1 are $17.50 and $11.50, respectively, the power to be available to public bodies, coöperatives, and privately owned electric utilities at points to be designated by the administrator. Schedule C-1 provides for a 5-mill per kilowatt hour "ceiling" for the first two years for coöperatives and other small customers requiring a demand of less than 1,000 kilowatts. Schedule D-1 carries no "ceiling" provision. In its order approving the schedules, the commission said they "can reasonably be expected to yield sufficient revenues to recover (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the Bonneville project) the allocated cost of producing and the cost of transmitting electric energy . . . including the amortization of the allocated capital investment over a reasonable period of years."

TVA Committee

THE joint congressional committee investigating the Tennessee Valley Authority will begin its work on July 11th at Knoxville, Tenn., Chairman Donahey announced recently.

The committee held its last preliminary session last month and will not meet again

until it reconvenes at Knoxville. Senator Donahey said the full committee would be present at that time and would begin the real work of the investigation, including a survey of the TVA properties.

Senator Donahey's announcement, it was said, indicated that the committee had virtually decided on the principal staff members.

Votes for Flood Control

THE Senate on June 9th passed a flood control bill involving authorizations for expenditures of more than $376,000,000. The total amount of the Flood Control Bill was raised from the $375,000,000 voted by the House to $376,700,000 by adoption of an amendment sponsored by Senator George to provide for work on the Savannah river.

The more important amendments adopted by the Senate involved questions of principle and control rather than allocation of funds. On motion by Senator Barkley the bill was amended to leave control over power projects in the Federal Power Commission, instead of with the Corps of Army Engineers as the House bill provided. Senator Norris put through an amendment, similar to one he had previously inserted in the Flood Control Bill, which restricted the War Department to flood-control functions instead of authorizing it to exercise control over "allied purposes." Senator Norris expressed a fear that the blanket authority might eventually put power developments such as the Tennessee Valley Authority or the work at Bonneville under supervision of the War Department.

Another amendment sponsored by Senator Barkley extended the benefits, now granted communities in relation to construction of dams and large works in which the Federal government reimburses communities up to 70 per cent of the cost of land and rights-of-way, to the cost of relocating highways, railroads, and public utilities, and to smaller operations such as ditching.

PWA Projects Delayed

THE Public Works Administration on June 18th made public a list of 49 proposed power projects which were being held up at Washington temporarily pending clarification of national power policy.

Officials considered that these projects may be in competition with existing private utilities. PWA's problem was to find a formula for offering the utilities a "fair and reasonable" price for the properties.

If an acceptable price is agreed to, presumably the municipality interested would take over the private plant. If no agreement were reached, the PWA would approve the necessary construction loans and grants. The projects involved an estimated outlay of $56,780,026.

Fortune—New Deal Survey

ALTHOUGH the most recent quarterly survey of public opinion released by *Fortune* magazine indicates that President Roosevelt and his objectives remain popular throughout the country, there is evident a strong trend against his methods and his advisers.

Of special interest to utilities is the fact that there is an increase in public disapproval of the New Deal's TVA policy, as compared with the results of former polls. The quarterly survey on the TVA registered 27 per cent of the country in favor, 24 per cent opposed, 16 per cent undecided, and 33 per cent uninformed.

The survey also indicated strong opposition to public ownership of the railroads.

Support for the President's TVA policy was registered at 87.2 per cent in the southwest and 75.2 per cent in the southeast. Offsetting opposition was registered at 59.7 per cent in the northeast, 59.2 in the northwest plains, 57.8 on the Pacific coast, and 53.2 in the middlewest.

Spanish Loyalists Decollectivize Power Industry

A STRIKING example of the policy of the Loyalist government in dealing with private industrial ownership was a recent decree ordering decollectivization of all electric enterprises in Catalonia, the majority of which have been operating under the name of Serveis Electrics Unificats de Catalunya.

This decree was said to be particularly impressive because relations between the government and the financial interests controlling Serveis Electrics have not been friendly.

This decollectivization, according to a government official, included four power plants—a fact which indicated that industrial Barcelona could rely on more power plants than it had previously been given credit for. The government official added that the C. N. T. anarchist syndicate, which controls the workers in these plants and which originally collectivized the company, had approved the decollectivization.

It was said that this development goes farther than the policy which the government has claimed to follow; namely, of respecting only small business. It represented, therefore, a distinct move to the right. It was also said to suggest that the government was taking drastic steps to conciliate big foreign capital and thereby the important financial interests which exert so much influence on the foreign policies of Britain and France.

The government official said the decree had been put in force and the plants returned to the owners. According to unofficial sources of information, however, it was reported that the private interests had declined to take over the plants.

Arizona

Verde Grant Authorized

PRESIDENT Roosevelt last month signed a bill authorizing payment of $46,024 in claims against the Verde River Irrigation and Power District of Phoenix.

The Public Works Administration authorized a $4,000,000 reclamation allotment to the district in 1933 for construction of Bartlett dam, on the Verde river. A year later the allotment was canceled and the Salt River Valley Water Users Association took over the work.

Arkansas

Ouachita River Dam

PRESIDENTIAL approval of the omnibus flood control bill was the signal for the Arkansas Power and Light Company to begin construction of a $6,000,000 combination flood control and power dam on the Ouachita river at Blakely mountain 14 miles northwest of Hot Springs.

Included in the measure was a provision for the U. S. Army Engineers to participate up to $2,000,000 in the construction of the upper 30 feet of the dam for flood control purposes. The total height of the dam will be between 150 and 170 feet. The power company will pay for the lower part of the dam, for the dam site, and the immense reservoir space that will be required.

This was said to be the first instance in which the government has participated jointly with a private utility in providing flood control. Some authorities saw in the joint participation a possible precedent of coöperation between the government and private industry that may result in negotiations for other construction projects that will aid recovery. Harvey C. Couch, president of the Arkansas Power and Light Company, said:

"While the power dam is not absolutely required at the present moment, we believe in the future of the state, and believe that its future administration will be progressive, and we want to do our part toward helping employment.

"Our license for the dam did not require that we construct a combination flood control and power dam, but because we are interested in the future of the Ouachita valley and its development, we decided to embrace the flood control feature in the dam to be of assistance to this section."

Mr. Couch said completion of the dam would culminate a development program on the Ouachita river launched about fifteen years ago.

C. S. Lynch, chief engineer of the utility company, will have charge of the construction of the dam.

Connecticut

Becomes Commission Chairman

COLONEL Edwy L. Taylor, of New Haven, became chairman of the state public utilities commission on July 1st, to hold office for one year, under the plan of rotating the chairmanship of the commission that has been in effect three years. He succeeded Joseph W. Alsop, of Avon, who had been chairman for the past year.

Colonel Taylor was the commission's first chairman, under the rotation plan, in 1935-36. The following year Major Alvan Waldo Hyde was chairman, and then Mr. Alsop. Chairmanship of the commission means no additional salary, under present arrangements.

Florida

Waterworks Power Plant

THE Miami city commission on June 14th, by a 4 to 1 vote, agreed to spend $180,000 for acquisition of an electric plant to furnish power for the city water system.

With Commissioner Alexander Orr, Jr., dissenting, the board, on motion of Commissioner John W. DuBose and seconded by Commissioner R. C. Gardner, instructed the city manager to employ C. F. Lambert, electrical engineer, for preparation of plans and specifications on the plant, preparatory to advertising for bids.

Commissioner DuBose, in offering his motion, described the move as a forerunner of a program for the city to develop its own electric system both for power and lights.

Kentucky

Discontinues Payment

THE Southern Bell Telephone & Telegraph Company recently notified the city of Louisville that it would not continue its $10,000 annual payment, which has been used to help pay expenses of the municipal bureau of research and service.

The company's reason for stopping payment, Mayor Joseph D. Scholtz was informed, was that the state public service commission, under an act of the state legislature, had raised the maximum to be collected from Kentucky utilities from $75,000 a year to $130,000. The company contended that the city had no right to make rates because that had been vested by law with the commission. Therefore, it said, the payments, which had been made monthly, would cease July 1st.

The Louisville Railway Company ceased paying its $10,000 about two years ago, Mayor Scholtz said. The mayor recently made a plea that the payments be resumed.

The budget of the Bureau of Research was set at $49,296 for the fiscal year ending August 31st, John R. Lindsay, Director of Finance, said. The bureau "has practically cost the city nothing in tax money," Mr. Lindsay asserted, because the utilities paid $20,000 a year and in January, 1937, the telephone company paid $50,000 for costs of the investigation of rates. Both the mayor and Mr. Lindsay said that withdrawal of the utilities' contributions might cause the bureau to be contracted appreciably.

Ordered to Seek Franchise

MAYOR Joseph D. Scholtz, of Louisville, recently disputed the Louisville Gas & Electric Company's claim to a perpetual franchise and has notified the company that it must obtain a franchise before further decisions could be reached in regard to electric rates.

The city is seeking to obtain lower service charges for the company's customers, municipal authorities having conferred last May with Basil Manly, member of the Federal Power Commission; David E. Lilienthal, director of the Tennessee Valley Authority; J. A. Krug, TVA engineer; and Richmond B. Keech, vice chairman of the District of Columbia Public Utilities Commission, to map a program for the city in negotiating a new electric rate schedule with Louisville Gas & Electric.

The city has no question to raise with the company regarding its gas rates or franchise, according to the mayor. The gas franchise was purchased by the company in 1936 with approval of the board of aldermen, when the aldermen approved the current gas and electric rate contract schedules. Both gas and power contracts of the company will expire on July 8th.

Louisiana

House Passes Franchise Bill

STAMPED as an "administration measure" by State Representative Frank Stick of Orleans, the controversial bill designed to give the state public service commission power to grant utilities franchises refused by parish police juries was passed by a vote of 69 to 11 by the house of representatives on June 16th.

Called from the calendar in a surprise move by Representative Stick, the bill which has threatened a breach between the state administration and Jefferson parish, was passed almost without comment after adoption of two amendments which, he said, were designed to clarify and make more definite the right of police juries to appeal from the state commission's ruling.

The amendments as adopted by the house provide that an appeal to the courts from a ruling of the public service commission shall "be on the same proposed franchise, or application for same, as may have been rejected by the police jury or regarding which the police jury and the applicant have failed to agree."

The bill was introduced in the senate by Senator Harvey Peltier, who charged that the Jefferson parish police jury was blocking progress by refusing to grant a franchise to the Gulf Natural Gas Corporation unless the company put up a $100,000 performance bond. The senate passed the bill on June 2nd.

Minnesota

Phone Case Delayed

THE St. Paul telephone rate case, considered of statewide significance, will not be argued before the state supreme court for possibly three months, due to adjournment of the high tribunal for the summer. It will reconvene September 19th.

In the telephone case, said to be one of the most important decisions in Minnesota on utility rate actions, because of its possible use as a precedent in future litigations, Judge Gustavus Loevinger of Ramsey County District Court ordered reductions averaging 25 per cent for approximately 57,500 telephone subscribers in the St. Paul metropolitan area.

Nebraska

Cannot Fix Purchase Price

G. R. McARTHUR, vice president of the Northwestern Public Service Company, told the Columbus city council recently that the firm could not supply the city at this time with the approximate figure at which it could sell its local facilities. The information had been requested by the council which was investigating both the possible acquisition of the private utility and construction of a municipal plant.

McArthur pointed out at a stormy 3-hour council session that the firm was bound by provisions of its franchise to permit the city to attempt to acquire it every five years if the city desires. The present franchise does not expire until 1942, he said, and a sale price could not be given until then.

McArthur's statement was attacked by C. N. McElfresh, an attorney for the Loup River Public Power District, who said the company "could offer a price if it wanted to." Also entering the discussion was the advisability of accepting the preliminary report of Robert Fulton, Lincoln consulting engineer, who recently told the council it could effect a rate reduction in electricity by erecting a municipal plant.

Seeks PWA Promise

IN addition to assurances from the Central Power Company, Nebraska City recently asked the Public Works Administration to promise that purchase of private power companies, under the proposed statewide grid setup, would not be consummated without first notifying municipalities, City Attorney Tyler revealed.

Letters directed to H. A. Gray, assistant PWA administrator in Washington, however, had gone unanswered, Tyler said. The only information from the Public Works Administration had been the statement that the negotiations were being conducted by the three Nebraska hydroelectric districts, not the PWA, he said.

In his letter to Gray, Tyler said he had asked for a copy of the purchase plan recently approved by Secretary Ickes; a copy of the agreement requiring PWA approval of the purchase; rules to be followed in determining whether approval will be given, and valuation of the properties of Central Power, which serves Nebraska City, reportedly fixed by J. D. Ross, Seattle engineer.

Value of Franchises

IF proposed values of franchises for taxation purposes are approved by the state board of equalization, the total may be slightly higher than the $4,383,850, value last year, Tax Commissioner Smith said on June 17th after hearing franchise holders. Reason for the increase, if it is approved, would be due to increased business of some franchise holders.

Representatives of York and Columbus, which have voted to "build, purchase, or acquire" power lines were heard by the board concerning valuations of the Iowa-Nebraska Light and Power Company at York and the Northwestern Public Service Company at Columbus.

Francis Dishner, Columbus councilman, and J. L. Dougherty, county attorney, did not think that the Public Service Company's franchise value had been lowered by the action of Columbus, but Maynard Grosshans, county attorney at York, did believe the value of the Iowa-Nebraska franchise was lowered.

The Ak-Sar-Ben Natural Gas Company was represented by L. L. Loughlin of Oxford. He objected to marked increase since in many cases they are paying $40 per $1,000 valuation and each $1,000 increase meant $40 more taxes.

The Iowa-Nebraska was not heard at the meeting but the Nebraska Power Company of Omaha and the Northwestern Bell Telephone Company of Omaha both appeared. Each franchise is valued at $1,000,000. The cases heard were taken under advisement and the board recessed until more holders should come in to be heard.

New York

Seek to End Ban

STRONG support developed last month for a constitutional amendment that would permit use of municipal utility plant profits for governmental expenditures. A long succession of witnesses, headed by Dean Paul S. Andrews, of Syracuse University Law School, ap-

peared before the Constitutional Convention's public utility committee at Albany in behalf of the proposal, submitted by State Supreme Court Justice Gilbert V. Schenck, Democratic delegate. No opposition was recorded, it was said.

Striking sharply at the state public service commission's opinion that municipal utility plants should operate at cost, Dean Andrews, advocating a return sufficient to lower governmental costs, declared:

"The system I am advocating would be a substantial incentive to economy."

Earlier, the New York State Conference of Mayors went on record as "100 per cent in favor" of the amendment, while from David E. Lilienthal, director of TVA, came an expression of unqualified approval.

North Carolina

Tests Validity of Tax

A suit regarded as a test case on the validity of the "use" tax enacted by the 1937 state general assembly on building materials bought outside and then brought into the state, was reported last month to be headed toward trial in Wake Superior Court.

Assistant Attorney General Wade Bruton filed the answer of the state in the suit brought by the Western Union Telegraph Company to recover "use" taxes collected on telephone poles it bought outside the state and shipped into the state.

The telegraph company contended the "use" tax, the validity of which the U. S. Supreme Court upheld in the case in which the validity of a "use" tax adopted by the state of Washington was upheld, did not apply in its own case as its intrastate and interstate business is so intermingled that it could not separate it. Hence, the company contended the application of the "use" tax on materials such as poles was a violation of interstate commerce laws.

North Dakota

Utility Rates Probed

The state railroad commission recently scheduled two hearings for July 6th to determine the reasonableness of rates and charges for service given by the North Dakota Power and Light and the Northern Power and Light companies.

Ben C. Larkin, commission president, said the state department had compiled a valuation and appraisement of all properties of the two public utilities in North Dakota and would receive other evidence and testimony at the scheduled hearings.

The investigation was being conducted by the board of railroad commissioners on its own motion under state laws providing for such studies, it was said.

Oregon

Rate Reduction Asked

The Portland General Electric Company recently requested permission of the state utility commissioner to file reductions in minimum monthly charges applying to residential and farm service schedules in the territories previously served by the Molalla Electric Company and the Yamhill Electric Company. These service areas are now included in the operating territory of the Portland General Electric Company.

The minimum charges for residential lighting and small appliance use in the two territories would be reduced from $1.50 to $1 per month, while charges for residential lighting and cooking would be $2 per month instead of $2.50. The general farm service tariff minimum charges would be reduced from $3.50 to $3 per month.

The reductions would mean a revenue loss to the company of $13,000 annually and 2,500 customers would be affected.

Bonds to Voters

The Cascade Locks council on June 13th ordered Teunis J. Wyers, city attorney, to draw up a charter amendment to be voted on as soon as possible, authorizing issuance of $12,000 in bonds to construct a municipal public utility system to take advantage of Bonneville power.

The council also rejected a new rate schedule submitted by the West Coast Power Company, which supplies the city.

Rhode Island

Extension Reduction Ordered

A REDUCTION from 75 cents to 63 cents per month on residential telephone extensions was ordered on June 9th by the state division of public utilities in a decision which assailed the financial practices of the New England Telephone and Telegraph Company and its parent organization, the American Telephone and Telegraph Company.

The New England Telephone and Telegraph Company subsequently announced it would fight the order in the courts and an appeal was taken to the state supreme court on June 15th. H. A. Fasick, division manager of the company, said there were several reasons which, in the judgment of the company's officers, made the order invalid. He said the company's principal contention at the hearing was that its earnings "were not sufficient to permit a reduction of any of its rates." Mr. Fasick stated:

"The commission's answer to this seems to be that the company could reduce its rates if it severed its relations with the American Telephone and Telegraph Company. This would not be to the advantage of telephone users either in service or in rates. The relationship is one of the company's greatest assets."

Tennessee

Power Stay Dissolved

ACTION of the state supreme court on June 8th in dismissing the injunction which stood against Columbia on the issuance of bonds with which to build a distribution system to handle TVA power removed the last legal barrier, Alderman Sherill Figures stated, and under favorable conditions TVA electricity would be available by fall.

The decree of the state supreme court reversed and remanded the cause, dissolved the injunction previously issued in the case, and dismissed the bill of the Tennessee Electric Power Company, as amended and supplemented. In a special election in August, 1936, Columbians voted 2 to 1 for TVA power.

The U. S. Circuit Court of Appeals, also on June 8th, at Covington, Ky., upheld Federal Judge John D. Martin's dismissal of a petition by which the West Tennessee Power & Light Company sought to enjoin the city of Jackson from issuing bonds to finance a municipal system for distribution of TVA power.

The city has had one unit of the 5-unit system under construction since last April. Mayor A. B. Foust, when informed of the court's decision, said plans would be made immediately to award additional contracts.

To Ask Power Loan

THE Chattanooga Electric Power Board on June 14th voted to apply for a Public Works Administration loan and grant of $3,000,000 in addition to a previous loan and grant of $4,330,000.

The money is to be used in providing a municipal power distribution system for the city. The total cost of the proposed system has been estimated by board engineers at $7,200,000.

A contract has been signed with the Tennessee Valley Authority for electric energy, it was said.

Contract Signed

THREE important signatures were affixed on June 15th to the contract calling for sale of Tennessee Public Service Company electric distribution properties to the city and TVA for a price of $8,035,000. They were those of Mayor Walter W. Mynatt, Dr. Harcourt A. Morgan, chairman of TVA, and Robert W. Lamar, vice president and general manager of Tennessee Public Service.

Only a suit by minority stockholders now stands in the way to the city and TVA taking over the properties. Signing of the important document occurred at the TVA offices in Knoxville. Mynatt had been given authority to sign the contract at a session of the city council.

Bondholders of the utility company have until July 15th in which to approve the contract and August 13th to cash in their holdings, provided the sale is approved by the Federal Power Commission.

Texas

Hand-set Savings Achieved

TELEPHONE subscribers of San Antonio using hand-set instruments will be saved $31,000 annually under an agreement which will ultimately eliminate the 15-cent monthly charge for the service, Mayor C. K. Quin said recently.

The agreement stipulated that the 15-cent charge would be made only for twelve months instead of for twenty-four months and that the charge would be eliminated entirely in July, 1939. About 5,000 users of hand sets will receive the 15-cent reduction effective with their July bills, and more than 17,000 subscribers will receive the reduction within the coming year.

Subscribers who already have paid the extra charge for twelve months or longer will receive the reduction this month. Those who have paid the charge less than a year will receive the cut at the end of the twelfth month. Hand sets installed in the future will cost 15 cents extra per month only until July, 1939.

Dam Application Filed

APPLICATION for a $6,000,000 dam project on the Brazos river near Whitney was filed with the regional Works Progress Administration office at Fort Worth last month by a delegation representing the Brazos River Conservation District. Mayor George O. Jones, Waco, who headed the delegation, said the project was one of the urgent units of the flood control and power program on the Brazos.

The application asked for a loan of $3,300,000 and a grant of $2,700,000.

Sales Agreement Reached

DIRECTORS of the Brazos River Conservation District, meeting at Austin last month with the Lower Colorado River Authority, announced the adoption of a policy governing the sale of power by which it would be made available to public agencies without the intervention of private profit.

John D. McCall, general counsel of the Brazos district, said the two agencies were in harmony on policies of power sales, but details had not been worked out. The understanding, he said, would not prohibit the authority from marketing power in Brazos territory.

Washington

Tax Data Confidential

CHAIRMAN H. H. HENNEFORD of the state tax commission recently said the commission would continue its policy of considering confidential its valuation analysis of operating property of any privately owned public utility.

He said the decision was based upon an attorney-general ruling that the commission "is at liberty to adopt reasonable rules as to what should be considered confidential and what should be open to public inspection."

The ruling was asked after requests by representatives of power districts to inspect such records.

Wisconsin

"Little TVA" Upheld

THE state supreme court on June 21st vacated a former unanimous decision invalidating Governor Philip F. La Follette's "little TVA" public power plan, but sharply limited the proposed activities in a divided opinion.

A 40-page decision was written by Justice John D. Wickhem. Dissents upon specific points were filed by three of the seven members of the court—Justices Oscar M. Fritz, Chester A. Fowler, and Edward T. Fairchild.

Application of the new decision would permit the Wisconsin Development Authority, a private corporation, to engage broadly in educating the public to the advantages of the organization of power districts and coöperatives, but would not allow it to assist in, agitate, or promote acquisition or construction of any plant by any municipality, power district, or coöperative.

The court last January unanimously declared the plan invalid on grounds it attempted to delegate sovereign government power.

Acquires Electric Property

ISSUING a final certification of just compensation, the state public service commission on June 18th completed the steps required to permit Shullsburg to acquire the Shullsburg electric property of the Interstate Light and Power Company and make it a municipal plant.

The state commission certification was issued following payment by the city of $20,700 into Lafayette county circuit court. The sum includes the $18,000 commission valuation as of 1936 for the real estate and equipment, and $2,700 as the maximum amount for material and supplies on hand and for additions to equipment made since the valuation.

Aided by the commission, the city and the utility company were to work out the exact value of the materials and supplies. The city meanwhile could take over the plant since the utility recently dropped its court appeal from a commission order. The case had been in the courts since 1936.

The Latest Utility Rulings

Commission Control of Competitive Construction by Rural Electric Coöperatives

THE West Virginia commission asserted its jurisdiction over construction by rural electric coöperative associations, denied authority to such an association to construct a generating plant where an electric utility company was operating, and authorized construction of certain transmission and distribution lines by the association. Chairman Preston dissented with respect to authorization for the transmission and distribution lines.

The coöperative association, joined by a representative of the Rural Electrification Administration, contended that the association was not operating as a public utility and that a certificate from the commission was not required. The association was incorporated for the purpose of generating, transmitting, distributing, and selling electric energy to its members only, with powers incident thereto. The charter contained a provision that the corporation should render no service to or for the public. But, said the commission:

> The applicant association was created and exists for no other purpose than to procure electricity for and make it available to its members. That is the only reason for which members join it. With nominal procedural requirements and limitations, membership is open to and exists for all of the public in the area of the project.

The money for construction comes through the Federal Rural Electrification Administration from the Reconstruction Finance Corporation and, as pointed out by the commission, since the loan is from public funds, persons in rural areas for whose benefit it is made must include all such persons in each such area capable and desirous of receiving such benefit, situated so as to be practically susceptible of receiving electric service. The commission continued:

> We do not feel Congress intended public moneys to be advanced for the benefit of a person or class only of the people of an area and denied to others within the area willing and able to receive it. Such funds were evidently intended for all members of the public in the area to be served, and it would be contrary to the legislative intent that membership in this coöperative association should be exclusive and self-determinative. Membership in the association has been actively solicited and no application has been refused. Lines are to be constructed on and across public roads. Membership in the association and the electric service to be secured through it is of public consequence, affecting the communities and the residents of the area at large. Since Federal funds are not to be advanced for purely private purposes, it follows from the foregoing considerations that the applicant's project must be for the purpose of serving the public generally in the territory where constructed, and that it will render a public service. In other words, it will be a utility with its service available to all the local inhabitants.

The commission did not believe that "the special relationship of members of a coöperative to the corporate entity, or to one another, can be used as a ruse to avoid the consequences which are attached to public service under the law." A charter exemption from any legal liability, duty, limitation, or immunity, otherwise applicable to the corporation, it was said, would obviously be void.

Authority to construct a generating plant was denied on the ground that it was not established of record that electric energy of equal reliability and dependability for its proposed transmission and distribution system could not be procured by the association as cheaply from the utility company as from its proposed generating plant. It was said that in the absence of a more conclusive showing

that it was impossible to purchase energy from the company at a rate comparable to its own generating cost, the commission should not issue a certificate to construct and operate the plant.

Much evidence was introduced as to the refusal by the electric company prior to organization of the coöperative association to extend service to rural customers. The commission expressed the opinion that if the company had offered at an earlier date to extend its lines into rural sections on a potential customer basis, as it did later, the association would probably have never been formed. Therefore, it was concluded, the company should not be given monopolistic protection to which it might otherwise be entitled. *Re Harrison Rural Electrification Association, Inc. (Case No. 2570).*

Segregation of Business to Fix Intrastate Rate of Interstate Company

THE United States Supreme Court upheld the method followed by the Texas commission in fixing wholesale rates of the Lone Star Gas Company. That body had considered the company's system as an integrated whole, although certain facilities were located in Oklahoma. The court reversed a judgment in favor of the commission order, however, on the ground that the company had been held to an untenable standard of proof in its attempt to show that the rate order was confiscatory.

On the question of interstate commerce it was contended by the company that transportation and sales to local distributing companies constituted interstate commerce so far as these transactions involved gas produced in Texas and distributed in Texas after passing through a pipe line cutting across the corner of Oklahoma, and also with respect to gas produced or purchased in Oklahoma and transported into the state. It appeared that about 70 per cent of the gas was produced in Texas, about 11 per cent in Oklahoma, and about 17 per cent was produced in Texas and after transportation through Oklahoma without interruption was brought back into Texas.

The court pointed out that the commission did not attempt to regulate the interstate transportation of gas, that it could not be said that the commission was undertaking to regulate sales and deliveries of gas in interstate commerce. The fact that one line cut across a corner of Oklahoma, it was held, did not make it any the less a part of the system serving Texas gas to communities in Texas. The manner of treatment of the gas from Oklahoma, run through extraction plants in Texas and commingled with Texas gas, made it an integral part of the gas which was supplied to the Texas communities.

The trial court had upset the commission order, but a state appellate court held that the company had failed to meet its burden of proof by showing the segregation of the interstate and intrastate properties and business. The Supreme Court held that this ruling was erroneous because the company had the right to attack the commission order on the same theory on which the commission had entered its order; namely, integration rather than segregation of the business. *Lone Star Gas Co. v. State of Texas et al.*

Going Concern Value Again Considered by United States Supreme Court

THE United States Supreme Court, in a decision upholding rates established by the Secretary of Agriculture for a stockyard company, held that the

evidence fell far short of condemning as arbitrary and confiscatory the Secretary's refusal to add a separate amount to his rate base to cover going concern value. Mr. Justice Butler, speaking for the court, said concerning this element of value:

> The value of appellant's property used in stockyard services is single in substance. West *v.* Chesapeake & P. Teleph. Co. (1935) 295 U. S. 662, 672, 8 P.U.R.(N.S.) 433. While it may be considered as made up of tangible and intangible elements, it is not necessarily to be appraised by adding to cost figures attributable to mere physical plant something to cover the value of the business. Kennebec Water Dist. *v.* Waterville (1902) 97 Me. 185, 220, 54 Atl. 6. Value depends upon use and is measured, or at least significantly indicated, by the profitableness of present and prospective service rendered at rates that are just and reasonable as between the owner of and those served by the property. Cleveland C. C. & St. L. R. Co. *v.* Backus (1894) 154 U. S. 439, 445, 38 L. ed. 1041; National Waterworks Co. *v.* Kansas City (1894) 62 Fed. 853, 864-866; Omaha *v.* Omaha Water Co. (1910) 218 U. S. 180, 202, 54 L. ed. 991; Des Moines Gas Co. *v.* Des Moines, 238 U. S. 153, 165, P.U.R. 1915D, 577; Denver *v.* Denver Union Water Co. 246 U. S. 178, 192, P.U.R. 1918C, 640. Cf. Montana Pub. Service Commission *v.* Great Northern Utilities Co. 289 U. S. 130, P.U.R. 1933C, 225. It is elementary that value of a going concern may be less than, equal to, or more than, present cost of plant less depreciation plus necessary supplies and working capital. See Galveston Electric Co. *v.* Galveston, 258 U. S. 388, P.U.R. 1922D, 159. Los Angeles Gas & E. Corp. Co. *v.* California R. Commission, 289 U. S. 287, P.U.R. 1933C, 229. Dayton Power & Light Co. *v.* Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 3 P.U.R.(N.S.)279. Appellant's plant without business, present or prospective, would be worth much less than the cost figures found by the Secretary to represent value. Appellant's claim, that the rate base includes nothing on account of going concern value, is without foundation in fact.

The court also sustained the Secretary of Agriculture in excluding from the rate base stock show property and trackage and unloading and loading facilities. A finding as to land value based on evidence of a civil engineer who had been engaged in land appraisal work was upheld although the company contended that he was not qualified as an expert witness because he had never lived in Denver, where the stockyards were located, or previously appraised any land there or in that vicinity or assembled or appraised any large industrial tracts. The opinion states on this question:

> The appraiser is an experienced civil engineer; he was long engaged in land appraisal work under the Interstate Commerce Commission. He later had private practice as consulting engineer and in 1934 became principal valuation engineer of the Packers and Stockyards Division, Bureau of Animal Industry, Department of Agriculture; in that capacity he has given testimony in a number of rate proceedings. His report submitted to the Secretary discloses elaborate investigation and consideration of prices paid for land, of the Interstate Commerce Commission's appraisals of lands in the vicinity and of other facts material to the ascertainment of value of the land in question. It cannot reasonably be said that, because of his lack of earlier knowledge of local conditions, the finding was made without evidence.

Denver Union Stock Yard Co. v. United States of America et al. (No. 798).

Commission Lacks Jurisdiction over Utility's Arrangement With Approved Sellers of Appliances

A COMPLAINT by representatives of an electric wholesalers' association against arrangements of the Consolidated Edison Company of New York with approved sellers of electrical appliances was dismissed by the New York commission for lack of jurisdiction. The complaint was that this company and its subsidiaries discriminated in the cost of their service to various consumers in the guise of a discount or rebate to be allowed to the consumer on the purchase of electrical appliances and supplies, different consumers of electric current being discriminated against in the price to them of such current.

The commission referred to its earlier decision in Groggins *v.* New York Edi-

son Co. (1936) 16 P.U.R.(N.S.) 365, and speaking through Commissioner Van Namee said:

> The company has the right under its corporate powers to engage in promotional merchandising and jobbing and the present campaign is a part of such activity. The company has a right to engage in reasonable advertising in order to promote the use of electric current. Electric appliances increase the use of electric current.

The promotional activity against which complaint was made was described in part by the company as follows:

> The "approved" participating dealers will give any customer of that dealer who presents a residential bill for electric service from the company an amount described as an earned merchandise credit of ½ cent for each kilowatt hour of electric consumption as shown on such residential bill for electric service, provided, however, that in no case shall the merchandise credit exceed 25 per cent of the retail selling price of the electric appliance purchased from the retail dealer.

The rebate granted by the retail dealers was entirely absorbed by the retailers and did not reduce the revenues of the company, nor was it a rebate from the present schedule of rates, nor had this amount any effect whatever, directly or indirectly, upon the amount paid the company for residential electric service at the rates approved for that classification of consumers. Further, it was noted that a consumer might obtain the rebate from the dealers in electric appliances irrespective of whether the consumer's bill was paid to the company or not.

Commissioner Van Namee said that there was no discrimination among those classes of consumers of the company who might obtain the reduction from the retail dealers, and the fact that some consumers might desire to take advantage of the offer did not affect in the slightest the rate charged for electric service. All had the same opportunity at the expense of the retail dealers. *Groggins et al. v. Consolidated Edison Co. of New York, Inc. (Case No. 9519).*

Court Cannot Prevent Commission Investigation without First Determining Jurisdictional Question

THE Federal Power Commission, at the behest of Pennsylvania officials, instituted an investigation to determine the conditions, practices, and matters regarding the ownership, operation, management, and control of certain corporations, some of which were admittedly public utility corporations subject to the jurisdiction of the commission and others alleged not to be subject to such jurisdiction. The corporations furnished various data and information but challenged the jurisdiction of the commission to make the order. The commission then ordered a hearing, and the corporations petitioned for a rehearing as to this order and for a termination of the proceedings. Rehearing was granted but the companies objected to the admissibility of evidence introduced by the commission's counsel on the ground that it was immaterial to the issues presented by the petition for rehearing.

The companies then obtained from the circuit court of appeals a decree remanding the case to the commission "for determination in accordance with the opinion" of the court and restraining the commission from proceeding with its proposed investigation until the jurisdictional questions raised in the petition for rehearing were determined by it. The United States Supreme Court has held that the circuit court of appeals had no jurisdiction to enter the decree.

The Supreme Court based its decision on the ground that there was no order of the commission before the circuit court of appeals for review and that the action of the court could not be sustained by virtue of authority conferred by §262 of the Judicial Code, which provides that the Federal courts shall have power to issue writs not specificially provided for by statute which may be necessary for the exercise of their respective jurisdic-

tions and agreeable to the usages and principles of law.

It was pointed out that the provision conferring appellate jurisdiction on the court in relation to orders of the Federal Power Commission did not apply since no application for review of the commission orders, if reviewable, had been made. The Supreme Court was of the opinion that the circuit court could not intervene to protect its prospective appellate jurisdiction since under the circumstances the circuit court had no appellate jurisdiction to protect. *Federal Power Commission v. Metropolitan Edison Co. et al.*

Judgment Affirming and Remanding for Further Determination Not Appealable to Supreme Court

A MOTION was granted by the United States Supreme Court to dismiss an appeal from a judgment of the supreme court of Missouri in a case involving a rate reduction order of the Missouri commission. Dismissal was based upon the ground that the judgment of the state court was not final.

The opinion of the state supreme court concluded with the statement that subject to the court's opinion a judgment of a lower court upholding the commission order should be affirmed and the cause remanded with directions to the lower court to remand to the commission that it might rehear and determine the facts on the points mentioned by the supreme court in accordance with the views in its opinion. The commission contended that under the statutes of Missouri the state supreme court reviewed the order judicially; that the commission acted legislatively, and that on the remand each of the matters mentioned by the supreme court would be before the commission and that it might proceed anew in the exercise of its discretion in their determination. It was said to be conceivable that the commission might reach conclusions which would constitute the basis of another appeal. Hence, it was argued that there was not yet a final judgment from which an appeal could be taken. The high court agreed with this contention of the commission.

The company urged that under the mandate of the state supreme court it would be the duty of the lower court to proceed at once to execute its judgment affirming the rate reduction order by distributing to the customers the amounts which had been impounded pending final determination of the validity of the commission's order. The Federal court held that no ruling of the state court for such a distribution was before it. *Laclede Gas Light Co. v. Public Service Commission of Missouri et al.*

Twin City Rate Ordinance Invalid

THE Federal circuit court of appeals for the fifth circuit held invalid a provision of an ordinance of the city of Texarkana, Texas, requiring that if rates of the Arkansas Louisiana Gas Company should be lowered in Texarkana, Arkansas, the same lower rates should be put into effect in Texarkana, Texas. The court took the position that the ordinance was completely invalid and unenforceable as an attempt to abdicate and delegate the city's rate-making function. The court reversed a lower court judgment holding that the company should pay to gas users certain refunds to cover the difference in the cost of gas in the two cities. *Arkansas Louisiana Gas Co. v. City of Texarkana.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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APPEARANCES: H. C. Walker, Jr., of Shreveport, Louisiana, argued the cause for appellant; Thomas Fitzhugh, of Little Rock, Arkansas, and John E. Benton, of Washington, D. C., for appellees.

Mr. Justice MCREYNOLDS delivered the opinion of the court: Appellant, a Delaware corporation, lawfully purchases and produces natural gas in Texas and Louisiana and thereafter transports and delivers it

through pipe lines to selected industries and public utility distributing corporations—so-called "pipe-line customers"—at points in Arkansas. These deliveries are made under contracts entered into at Shreveport, Louisiana, and are effected by tapping a main pipe line or through connecting spurs. They amount annually to some eight billion cubic feet.

Appellant, by admission, also maintains a distribution department, through which it acts as a public utility, for the local sale and distribution of gas in many Arkansas towns; but this organization is distinct from the one which supplies pipe-line customers.

The Arkansas Department of Public Utilities, proceeding under a local statute, Laws, Ark. 1935, No. 324, p. 895, in April, 1935, issued a general order (No. 13) requiring public utilities to file, upon specified forms, schedules of rates, charges, etc. Appellant presented such schedules for local utility service in the state, but declined to file copies of contracts, agreements, etc., for sales and deliveries to pipe-line customers.

Thereupon the Department issued an order to show cause for this failure. In response appellant "set forth that the sale and delivery of gas from its Texas and Louisiana fields to its pipe-line and industrial customers in Arkansas constitute interstate commerce, and that in making such sales and deliveries it was and is not acting as a public utility, and that accordingly the sale and delivery of said gas and the rates, schedules, and charges upon which the same is delivered and sold were and are not subject to the jurisdiction of the Department and are beyond its power to regulate, and that Order No. 13 is not legally applicable to said business."

After a hearing upon the citation and response and much evidence, April 30, 1936 (14 P.U.R.(N.S.) 150) the Department ordered compliance with the general order. The matter then went for review to the circuit court, Pulaski county, and held the challenged order invalid. Upon appeal the supreme court ruled that the sales and deliveries in question were not free from state regulation because parts of interstate commerce and directed compliance with the Department's general order.

[1] The question for present determination is whether this general order, valid under the laws of the state, which only compels appellant to file certain designated information, amounts to an infringement of any right or privilege guaranteed to it by the Federal Constitution. And to this a negative answer must be given.

If, as claimed, certain of appellant's activities in Arkansas are part of interstate commerce, that alone (and no other defense is relied upon) would not suffice to justify refusal to furnish the information presently demanded by the state.

Appellant operates locally at many places in Arkansas, also delivers within the state great quantities of gas said to move without interruption from another state. In such circumstances it may be highly important for the state authorities to have information concerning all its operations. We are unable to see that merely to require comprehensive reports covering all of them would ma-

erially burden or unduly interfere with the free flow of commerce between the states.

[2] In case the Department undertakes by some future action to impose what may be deemed unreasonable restraint or burden upon appellant's interstate business through rate regulation or otherwise, that may be contested. The rule here announced is that no constitutional question will be passed upon unless necessary for disposition of the pending cause.

The judgment of the supreme court must be affirmed.

Mr. Justice Cardozo took no part in the consideration or decision of this cause.

UNITED STATES SUPREME COURT

Fred O. Morgan, Doing Business As Fred O. Morgan Sheep Commission Company et al.

v.

United States et al.

[No. 581.]

(— U. S. —, 82 L. ed. —, 58 S. Ct. 773.)

rocedure, § 21 — Fair hearing — Necessity.

1. Protection of the liberty and property of the citizen by the rudimentary requirements of fair play in administrative proceedings of a quasi judicial character demands a fair and open hearing, which is essential alike to the validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process, p. 341.

rocedure, § 26 — Hearing — Adequacy.

2. The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them, and the right to submit argument implies that opportunity, p. 343.

ates, § 649 — Hearing — Adversary character of proceeding.

3. Failure to grant a full hearing in a proceeding before the Secretary of Agriculture to fix rates of stockyard market agencies is not excused by the fact that the proceeding was not upon complaint but was initiated as a general inquiry, and therefore claimed not to be of an adversary character, when in all substantial respects the government, acting through a bureau,

was prosecuting the proceeding against the owners of the market agencies and the proceeding had all the essential elements of contested litigation, p. 344.

Rates, § 649 — Hearing — Adequacy.

4. A hearing before the Secretary of Agriculture, in a proceeding to establish maximum rates for market agencies at stockyards, is fatally defective when the Secretary accepts and makes as his own the findings which have been prepared by the active prosecutors for the government, after an ex parte discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims thus presented and to contest them; this is more than an irregularity in practice, p. 345.

(BLACK, J., dissents.)

[April 25, 1938.]

APPEAL *by market agencies at stockyards from decree of District Court dismissing suits to set aside an order of the Secretary of Agriculture establishing maximum rates for such agencies; reversed. For case on rehearing petition, see post, p. 346.*

APPEARANCES: Frederick H. Wood, of New York city, and John B. Gage, of Kansas City, Missouri, argued the cause for appellants; Solicitor General Jackson and Wendell Berge, both of Washington, D. C., argued the cause for appellees.

Mr. Chief Justice HUGHES delivered the opinion of the court: This case presents the question of the validity of an order of the Secretary of Agriculture fixing maximum rates to be charged by market agencies at the Kansas City Stock Yards. Packers and Stockyards Act, August 15, 1921, 42 Stat. at L. 159, Chap. 64, 7 USCA §§ 181–229. The district court of three judges dismissed the bills of complaint in fifty suits (consolidated for hearing) challenging the validity of the rates, and the plaintiffs bring this direct appeal. 7 USCA § 217; 28 USCA § 47.

The case comes here for the second time. On the former appeal we met, at the threshold of the controversy, the contention that the plaintiffs had not been accorded the hearing which the statute made a prerequisite to a valid order. The district court had struck from plaintiffs' bills the allegations that the Secretary had made the order without having heard or read the evidence and without having heard or considered the arguments submitted, and that his sole information with respect to the proceeding was derived from consultation with employees in the Department of Agriculture. We held that it was error to strike these allegations, that the defendant should be required to answer them, and that the question whether plaintiffs had a proper hearing should be determined. (1936) 298 U. S. 468, 80 L. ed. 1288, 56 S. Ct. 906.

After the remand, the bills were amended and interrogatories were directed to the Secretary which he answered. The court received the evi-

dence what had been introduced at its previous hearing, together with additional testimony bearing upon the nature of the hearing accorded by the Secretary. This evidence embraced the testimony of the Secretary and of several of his assistants. The district court rendered an opinion, with findings of fact and conclusions of law, holding that the hearing before the Secretary was adequate and, on the merits, that his order was lawful. On this appeal, plaintiffs again contend (1) that the Secretary's order was made without the hearing required by the statute and (2) that the order was arbitrary and unsupported by substantial evidence.

[1] The first question goes to the very foundation of the action of administrative agencies intrusted by the Congress with broad control over activities which in their detail cannot be dealt with directly by the legislature. The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand "a fair and open hearing,"—essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an "inexorable safeguard." St. Joseph Stock Yards Co. v. United States (1936) 298 U. S. 38, 73, 80 L. ed. 1033, 1052, 14 P.U.R.(N.S.) 397, 56 S. Ct. 720; Ohio Bell Teleph. Co. v. Ohio Pub. Utilities Commission (1937) 301 U. S. 292, 304, 81 L. ed. 1093, 1101, 18 P.U.R.(N.S.) 305, 57 S. Ct. 724; California R. Commission v. Pacific Gas & E. Co. (1938) 302 U. S. 388, 393, 82 L. ed. —, 21 P.U.R.(N.S.) 480, 58 S. Ct. 334; Morgan v. United States, *supra*. And in equipping the Secretary of Agriculture with extraordinary powers under the Packers and Stockyards Act, the Congress explicitly recognized and emphasized this requirement by making his action depend upon a *"full hearing."* Section 310.[1]

In the record now before us the controlling facts stand out clearly. The original administrative proceeding was begun on April 7, 1930, when the Secretary of Agriculture issued an order of inquiry and notice of hearing with respect to the reason-

[1] Section 310 of the Packers and Stockyards Act (42 Stat. at L. 159, 166, Chap. 64, 7 USCA § 211) provides:

"Section 310. Whenever after full hearing upon a complaint made as provided in § 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

"(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; . . ."

ableness of the charges of appellants for stockyards services at Kansas City. The taking of evidence before an examiner of the Department was begun on December 3, 1930, and continued until February 10, 1931. The government and appellants were represented by counsel and voluminous testimony and exhibits were introduced. In March, 1931, oral argument was had before the Acting Secretary of Agriculture and appellants submitted a brief. On May 18, 1932, the Secretary issued his findings and an order prescribing maximum rates. In view of changed economic conditions, the Secretary vacated that order and granted a rehearing. That was begun on October 6, 1932, and the taking of evidence was concluded on November 16, 1932. The evidence received at the first hearing was resubmitted and this was supplemented by additional testimony and exhibits. On March 24, 1933, oral argument was had before Rexford G. Tugwell as Acting Secretary.

It appears that there were about 10,000 pages of transcript of oral evidence and over 1,000 pages of statistical exhibits. The oral argument was general and sketchy. Appellants submitted the brief which they had presented after the first administrative hearing and a supplemental brief dealing with the evidence introduced upon the rehearing. No brief was at any time supplied by the government. Apart from what was said on its behalf in the oral argument, the government formulated no issues and furnished appellants no statement or summary of its contentions and no proposed findings. Appellants' request that the examiner prepare a tentative report, to be submitted as a basis for exceptions and argument, was refused.

Findings were prepared in the Bureau of Animal Industry, Department of Agriculture, whose representatives had conducted the proceedings for the government, and were submitted to the Secretary who signed them, with a few changes in the rates, when his order was made on June 14, 1933. These findings, 180 in number, were elaborate. They dealt with the practices and facilities at the Kansas City live-stock market, the character of appellants' business and services, their rates and the volume of their transactions, their gross revenues, their methods in getting and maintaining business, their joint activities, the economic changes since the year 1929, the principles which governed the determination of reasonable commission rates, the classification of cost items, the reasonable unit costs plus a reasonable amount of profits to be covered into reasonable commission rates, the reasonable amounts to be included for salesmanship, yarding salaries and expenses, office salaries and expenses, business getting and maintaining expenses, administrative and general expenses, insurance, interest on capital, and profits, together with summary and the establishment of the rate structure. Upon the basis of the reasonable costs as thus determined, the Secretary found that appellants' schedules of rates were unreasonable and unjustly discriminatory and fixed the maximum schedules of the just and reasonable rates thereafter to be charged.

No opportunity was afforded to appellants for the examination of the

findings thus prepared in the Bureau of Animal Industry until they were served with the order. Appellants sought a rehearing by the Secretary but their application was denied on July 6, 1933, and these suits followed.

The part taken by the Secretary himself in the departmental proceedings is shown by his full and candid testimony. The evidence had been received before he took office. He did not hear the oral argument. The bulky record was placed upon his desk and he dipped into it from time to time to get its drift. He decided that probably the essence of the evidence was contained in appellants' briefs. These, together with the transcript of the oral argument, he took home with him and read. He had several conferences with the solicitor of the Department and with the officials in the Bureau of Animal Industry and discussed the proposed findings. He testified that he considered the evidence before signing the order. The substance of his action is stated in his answer to the question whether the order represented his independent conclusion, as follows:

"My answer to the question would be that that very definitely was my independent conclusion as based on the findings of the men in the Bureau of Animal Industry. I would say, I will try to put it as accurately as possible, that it represented my own independent reactions to the findings of the men in the Bureau of Animal Industry."

Save for certain rate alterations, he "accepted the findings."

[2] In the light of this testimony there is no occasion to discuss the extent to which the Secretary examined the evidence, and we agree with the government's contention that it was not the function of the court to probe the mental processes of the Secretary in reaching his conclusions if he gave the hearing which the law required. The Secretary read the summary presented by appellants' briefs and he conferred with his subordinates who had sifted and analyzed the evidence. We assume that the Secretary sufficiently understood its purport. But a "full hearing"—a fair and open hearing—requires more than that. The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the government in a quasi judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command.

No such reasonable opportunity was accorded appellants. The administrative proceeding was initiated by a notice of inquiry into the reasonableness of appellants' rates. No specific complaint was formulated and, in a proceeding thus begun by the Secretary on his own initiative, none was required. Thus, in the absence of any definite complaint, and in a sweeping investigation, thousands of pages of testimony were taken by the examiner and numerous complicated exhibits were introduced bearing upon all phases of the broad sub-

ject of the conduct of the market agencies. In the absence of any report by the examiner or any findings proposed by the government, and thus without any concrete statement of the government's claims, the parties approached the oral argument.

Nor did the oral argument reveal these claims in any appropriate manner. The discussion by counsel for the government was "very general," as he said, in order not to take up "too much time." It dealt with generalities both as to principles and procedure. Counsel for appellants then discussed the evidence from his standpoint. The government's counsel closed briefly, with a few additional and general observations. The oral argument was of the sort which might serve as a preface to a discussion of definite points in a brief, but the government did not submit a brief. And the appellants had no further information of the government's concrete claims until they were served with the Secretary's order.

Congress, in requiring a "full hearing," had regard to judicial standards,—not in any technical sense but with respect to those fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature. If in an equity cause, a special master or the trial judge permitted the plaintiff's attorney to formulate the findings upon the evidence, conferred ex parte with the plaintiff's attorney regarding them, and then adopted his proposals without affording an opportunity to his opponent to know their contents and present objections, there would be no hesitation in setting aside the report or decree as having been made without a fair hearing. The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps.

[3] The answer that the proceeding before the Secretary was not of an adversary character, as it was not upon complaint but was initiated as a general inquiry, is futile. It has regard to the mere form of the proceeding and ignores realities. In all substantial respects, the government acting through the Bureau of Animal Industry of the Department was prosecuting the proceeding against the owners of the market agencies. The proceeding had all the essential elements of contested litigation, with the government and its counsel on the one side and the appellants and their counsel on the other. It is idle to say that this was not a proceeding in reality against the appellants when the very existence of their agencies was put in jeopardy. Upon the rates for their services the owners depended for their livelihood and the proceeding attacked them at a vital spot. This is well shown by the fact that, on the merits, appellants are here contending that under the Secretary's order many of these agencies, although not found to be inefficient or wasteful, will be left with deficits instead of reasonable compensation for their services and will be compelled to go out of business. And to this the government responds that if as a result of the prescribed rates some agencies may be unable to continue, because through existing competition there are too many, that fact will not invalidate the order. While we are not

now dealing with the merits, the breadth of the Secretary's discretion under our rulings applicable to such a proceeding (Tagg Bros. & Moorhead v. United States [1929] 280 U. S. 420, 74 L. ed. 524, 50 S. Ct. 220; Acker v. United States [1936] 298 U. S. 426, 80 L. ed. 1257, 56 S. Ct. 824) places in a strong light the necessity of maintaining the essentials of a full and fair hearing, with the right of the appellants to have a reasonable opportunity to know the claims advanced against them as shown by the findings proposed by the Bureau of Animal Industry.

Equally unavailing is the contention that the former Secretary of Agriculture had made an order in May, 1932, containing findings of fact and fixing a schedule of rates, of which appellants were apprised. Because of changes in economic conditions, the Secretary himself had set aside that order and directed a rehearing. This necessarily involved, as the Secretary found, a consideration "of changes both general and particular" which had "occurred since the year 1929" and brought up all the questions pertinent to the new situation to which the additional evidence upon the rehearing was directed. The former findings and order were no longer in effect and it is with the conduct of the later proceeding that we are concerned.

[4] The government adverts to an observation in our former opinion that, while it was good practice——which we approved——to have the examiner, receiving the evidence in such a case, prepare a report as a basis for exceptions and argument, we could not say that that particular type of procedure was essential to the validity of the proceeding. That is true, for, as we said, what the statute requires "relates to substance and not form." Conceivably, the Secretary, in a case the narrow limits of which made such a procedure practicable, might himself hear the evidence and the contentions of both parties and make his findings upon the spot. Again, the evidence being in, the Secretary might receive the proposed findings of both parties, each being notified of the proposals of the other, hear argument thereon and make his own findings. But what would not be essential to the adequacy of the hearing if the Secretary himself makes the findings is not a criterion for a case in which the Secretary accepts and makes as his own the findings which have been prepared by the active prosecutors for the government, after an ex parte discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims thus presented and to contest them. That is more than an irregularity in practice; it is a vital defect.

The maintenance of proper standards on the part of administrative agencies in the performance of their quasi judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit them-

selves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.

As the hearing was fatally defective, the order of the Secretary was invalid. In this view, we express no opinion upon the merits. The decree of the district court is reversed.

It is so *ordered*.

Mr. Justice Black dissents.

Mr. Justice Cardozo and Mr. Justice Reed took no part in the consideration and decision of this case.

UNITED STATES SUPREME COURT

Fred O. Morgan et al.

v.

United States et al.

[No. 581.]

(— U. S. —, 82 L. ed. —, 58 S. Ct. —.)

Appeal and review, § 71 — Grounds for rehearing — Decision contrary to law of the case — Ruling on fair hearing.

1. A rehearing before the Supreme Court should not be granted on the ground that the court has reversed itself and that its decision is contrary to the law of the case as established on a former appeal when on the former appeal the court held that the question whether plaintiffs had a proper hearing before a rate-making authority should be determined in the lower courts, while on the present appeal the court after further proceedings has decided that plaintiffs had been denied such a fair hearing, p. 347.

Appeal and review, § 71 — Law of the case — Ruling on adequacy of hearing.

2. The fact that the court on a former appeal relating to the adequacy of a hearing in a rate case expressed the view that the mere presence or absence of an examiner's report was not itself determinative of the question whether a fair hearing was accorded, is not inconsistent with a ruling on a second appeal that a fair hearing was denied because findings of fact to support a rate order were not made by the rate authority on his own consideration of the evidence but upon findings prepared by the prosecuting agency without adequate opportunity to the regulated company to examine the findings and to contest them, p. 347.

Appeal and review, § 16 — Questions considered — Rate case — Disposal of impounded funds — Ruling on adequacy of hearing.

3. The appellate court, in ruling that a rate order is invalid because the required hearing was not given and that the case should be remanded to the lower court for further proceedings, will not make a determination as to the disposal of impounded funds representing charges paid in excess of the

rates fixed by the rate order since this is a matter for determination by the lower court in further proceedings which may be had before it, p. 349.

(BLACK, J., dissents.)

[May 31, 1938.]

PETITION *for rehearing after reversal of lower court decree sustaining rate orders of Secretary of Agriculture; rehearing denied. For original decision of Supreme Court, see ante, p. 339.*

PER CURIAM: The Solicitor General moves for a rehearing of this case upon two grounds:

[1, 2] *First.* The first ground is that the court has reversed itself; that the present decision is "directly contrary to the law of the case" as established by the court's decision on the former appeal (Morgan v. United States [1936] 298 U. S. 468, 80 L. ed. 1288, 56 S. Ct. 906); and that "a procedural omission" previously held "to be of no significance" is now regarded as "fatally defective."

These assertions are unwarranted. Not only are the two decisions consistent, but the rule announced in our former opinion was applied and was decisive of the present appeal. And the government is in no position to claim surprise. The question whether there had been a fair hearing in the present case, in the light of the situation disclosed by the Secretary's testimony and the other evidence, was fully argued at the bar. Appellants presented both orally and in an elaborate brief, with copious references to the record, the contention which we sustained.

The first appeal was brought to this court because the plaintiffs had been denied an opportunity to prove that the Secretary of Agriculture had failed to give them the full hearing which the statute required. Their allegations to that effect had been struck out by the district court. We held its ruling to be erroneous and that the question whether the plaintiffs had a proper hearing should be determined, saying:

"But there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them."

The case was then tried by the district court upon that issue. From the Secretary's frank disclosure it appeared that findings of fact necessary to sustain the order had not been made by him upon his own consideration of the evidence but as stated below. Because such action fails to satisfy the requirement of a full hearing stated in our first opinion and quoted above, we reversed the judgment of the district court which sustained the order.

Testimony of the Secretary and his associates disclosed what had actually occurred. It appeared that the oral argument before the Assistant Secretary had been general and sketchy; that, aside from the oral argument, which did not reveal the claims of the government in any appropriate manner, the government had submitted no

brief and no statement of its contentions had been furnished; that in this situation findings had been prepared in the Bureau of Animal Industry, Department of Agriculture, whose representatives had conducted the proceedings for the government; that these findings, 180 in number, were elaborate, dealing with all phases of the practices and facilities at the Kansas City live-stock market, the services and methods of the plaintiffs, and the costs and profits which should be allowed them as reasonable. These findings, prepared not by the Secretary but by those who had prosecuted the case for the government, were adopted by the Secretary with certain rate alterations. No opportunity was afforded to the plaintiffs for the examination of the findings thus prepared until they were served with the Secretary's order and their request for a rehearing was denied.

The statement made in the petition for rehearing that the present decision is contrary to the law of the case as declared in our first opinion is wholly unfounded. Our decision was not rested upon the absence of an examiner's report. So far from departing from our former opinion, or from the statement that the mere matter of the presence or absence of an examiner's report was not itself determinative, we reiterated both that statement and the principle underlying it in our opinion on the present appeal. We said:

"Those who are brought into contest with the government in a quasi judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command.

"No such reasonable opportunity was accorded appellants. . . .

. . . . . .

"The government adverts to an observation in our former opinion that, while it was good practice—which we approved—to have the examiner, receiving the evidence in such a case, prepare a report as a basis for exceptions and argument, we could not say that that particular type of procedure was essential to the validity of the proceeding. That is true, for, as we said, what the statute requires 'relates to substance and not form.' Conceivably, the Secretary, in a case the narrow limits of which made such a procedure practicable, might himself hear the evidence and the contentions of both parties and make his findings upon the spot. Again, the evidence being in, the Secretary might receive the proposed findings of both parties, each being notified of the proposals of the other, hear argument thereon and make his own findings."

And, then, pointing out the distinction and the serious defect in the procedure in the instant case, we added:

"But what would not be essential to the adequacy of the hearing if the Secretary himself makes the findings is not a criterion for a case in which the Secretary accepts and makes as his own the findings which have been prepared by the active prosecutors for the government, after an ex parte discussion with them and without according any reasonable opportunity to the respondents in the proceeding to know the claims thus presented and to contest them. That is more than an irregularity in practice; it is a vital defect."

The distinction was again brought out in our recent decision in the case of National Labor Relations Board v. Mackay Radio & Teleg. Co. (1938) — U. S. —, 82 L. ed. —, 24 P.U.R. (N.S.) —, 58 S. Ct. 904, where the mere absence of an examiner's report was found not to be controlling, as the record showed that in that case the contentions of the parties had been clearly defined and that there had been in the substantial sense a full and adequate hearing.

The effort to establish a case for rehearing, either because of an asserted inconsistency in our rulings or because of lack of opportunity for full argument, is futile.

[3] *Second.* The second ground upon which a rehearing is sought is that there is impounded in the district court a large sum representing charges paid in excess of the rates fixed by the Secretary. The Solicitor General raises questions both of substance and procedure as to the disposition of these moneys. These questions are appropriately for the district court and they are not properly before us upon the present record. We have ruled that the order of the Secretary is invalid because the required hearing was not given. We remand the case to the district court for further proceedings in conformity with our opinion. What further proceedings the Secretary may see fit to take in the light of our decision, or what determinations may be made by the district court in relation to any such proceedings, are not matters which we should attempt to forecast or hypothetically to decide.

The petition for rehearing is denied.

Mr. Justice Black dissents.

Mr. Justice Cardozo and Mr. Justice Reed took no part in the consideration of this petition.

MASSACHUSETTS SUPREME JUDICIAL COURT

Re Opinion of the Justices

(— Mass. —, 14 N. E. (2d) 392.)

Service, § 325 — Scope of undertaking by electric company — Furnishing of free light bulbs.

1. Enactment of a statute requiring electric companies to furnish consumers with electric light bulbs without charge would impose upon the companies a requirement beyond their undertaking, which under the General Laws is the making and selling, or distributing and selling, of electricity, p. 351.

Service, § 325 — Electric companies — Furnishing of bulbs — Safety.

2. No sound ground based on reasons of safety appears for a statutory compulsion that electric companies furnish electric light bulbs, p. 351.

Return, § 16 — Right to earn — Compensation for service.

3. Electric utility companies cannot be required to perform a duty outside their original undertaking unless they are compensated therefor, p. 352.

Constitutional law, § 18 — Taking of property — Chartered corporations.

4. The reserved right to amend or repeal the charters of electric utility corporations does not go so far as to authorize the taking of the property of such companies and devoting it to a different use, p. 352.

Constitutional law, § 18 — Deprivation of property — Electric companies — Statute requiring furnishing of free bulbs.

5. Enactment of a statute providing that every electric company shall furnish its consumers with electric light bulbs without charge therefor would result in depriving the companies of their property without due process of law, p. 352.

Merchandising and jobbing, § 1 — Sale of appliances — Separate business.

Statement that it has been recognized that the sale of electrical appliances is a business separate and distinct from the manufacture, sale, and distribution of electrical energy, p. 351.

(FIELD, J., concurs.)

[April 7, 1938.]

QUESTIONS *propounded to justices of the Supreme Judicial Court by the House of Representatives concerning validity of proposed statute requiring electric companies to furnish electric light bulbs without charge; questions answered and proposed legislation held to be unconstitutional.*

Answers to questions propounded to the Justices of the Supreme Judicial Court by resolution of the House of Representatives.

House of Representatives,
March 24, 1938.

Whereas, there is now pending before the House of Representatives a bill, House No. 150, a copy of which is submitted herewith, providing that "Every electric company shall furnish its consumers with electric light bulbs without charge therefor"; and

Whereas, no such requirement is found in any existing law or proposed in any pending legislation, with reference to municipal electric lighting plants; and

Whereas, grave doubt exists as to the constitutionality of said bill, if enacted into law; accordingly be it

Ordered, that the House of Representatives require the opinions of the honorable the justices of the supreme judicial court on the following important questions of law:

1. Is it constitutionally competent for the general court to require an electric light company to furnish electric light bulbs to its consumers without charge therefor, as provided in said bill, notwithstanding the provisions of § 1 of Art. 14 of the Amendments to the Constitution of the United States that no state shall deprive any person of property without due process of law?

2. Would the requirement of said bill that every electric company shall furnish electric light bulbs to its consumers without charge therefor, if enacted into law, when no municipal electric lighting plant is subjected or

proposed by pending legislation to be subjected to any such requirement, constitute a denial to electric companies of the equal protection of the laws, in violation of the provisions of said section of said Article of Amendment to said Constitution?

3. Would said requirement that such companies furnish free electric light bulbs to their consumers, if enacted into law, be a valid exercise of the police power of the commonwealth, notwithstanding the provisions of said section of said Article of Amendment to said Constitution?

Opinions of the honorable the justices of the supreme judicial court relative to "An act requiring electric companies to furnish without charge electric light bulbs to consumers."

To The Honorable the House of Representatives of the Commonwealth of Massachusetts:

The justices of the supreme judicial court have considered the questions embodied in the order adopted on March 24, 1938, copy of which is hereto annexed, and respectfully submit the following opinion:

The proposed statute requires that "Every electric company shall furnish its consumers with electric light bulbs without charge therefor." This is brief. It is to be interpreted according to the common and approved usage of the language. Its words express the clear idea that the consumers of electricity shall receive electric light bulbs without cost to themselves, and that the expense of such bulbs shall be carried wholly by the electric company. This thought is emphasized because it is set forth in almost identical terms in the title. No reference is made in the proposed statute to the public board which has power to fix the rates for electricity or to the inclusion of the cost of bulbs in the price of electricity to be charged to consumers. Some mention of this subject would be expected if it were intended that such expense should be passed on to the consumers in any form. "Electric company" is defined in G.L.(Ter.Ed.) Chap. 164, § 1, as "a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power, or otherwise and selling, or distributing and selling, electricity within the commonwealth." The word "shall" as employed in a statute of this nature imports an imperative and unescapable obligation. McCarty v. Boyden (1931) 275 Mass. 91, 93, 175 N. E. 292; Decatur v. Peabody (1925) 251 Mass. 82, 88, 146 N. E. 360. "'Furnish' means to provide or supply." Panasuk's Case (1914) 217 Mass. 589, 593, 105 N. E. 368, 369. It implies some degree of active effort to accomplish the designated end. "Without charge therefor" signifies in this context without payment by the consumers in any way directly or indirectly. Niles v. Adams (1911) 208 Mass. 100, 103, 94 N. E. 285.

[1, 2] The proposed statute imposes a requirement for electric companies which is beyond their undertaking. The definition already quoted from the General Laws confines the activities of electric companies to the "making . . . and selling, or distributing and selling, electricity." Their function is different from that of telephone companies, which supply "telephone service." G.L.(Ter.

Ed.) Chap. 166, § 14. It has been recognized that the sale of electrical appliances is a business separate and distinct from the manufacture, sale, and distribution of electrical energy. MacRae v. Concord (1937) — Mass. —, 6 N. E. (2d) 366, 108 A.L.R. 1450. There appears to be no sound ground based on reasons of safety for a statutory compulsion that electric companies furnish bulbs. We are not aware of any considerations affecting the public health or promoting the public morals which would arise from the operation of the proposed statute.

[3, 4] Such companies cannot be required to perform a duty outside their original undertaking unless they are compensated therefor. The investment of capital in electric companies was made on the footing of being devoted to the uses specified in the statute under which they were incorporated. The reserved right to amend or repeal the charters of such corporations does not go so far as to authorize the taking of that property and devoting it to a different use. If a statute of the kind here proposed is to be held valid, all sorts of equipment may be required to be furnished free with the result that capital originally invested in the business of making, selling, and distributing electricity will be diverted into a different type of business and be gradually forced to assume risks substantially unlike those of the business in which the stockholders consented to engage at the outset. This proposed statute compels the electric companies to furnish a service which is not necessarily related to the function of supplying electricity to consumers. It is outside that undertaking. In this connection it is of no consequence whether the charge therefor can be included in their rates. It is different in principle from a prohibition of any charge for meters which are essential to measure accurately the electricity delivered to the consumers.

[5] Lighting is only one of the many uses of electricity. Current for power is an important branch of the business of electric companies. The commonwealth must act through the power of eminent domain if it designs to compel property invested for the conduct of one public use to be devoted to a different public use. This limitation cannot be avoided on the theory that the company may receive adequate compensation through rates. The proposed bill makes no provision for the increase of rates. The situation is comparable to an attempt to make a railroad build a line in territory in which it had not undertaken to build a line. A statute of that nature was held unconstitutional in Missouri P. R. Co. v. Nebraska (1910) 217 U. S. 196, 207, 54 L. ed. 727, 30 S. Ct. 461, 18 Ann. Cas. 989.

If the proposed statute is permissible, there seems to be no sound ground in reason why the general court may not require the electric companies to supply the necessary fixtures and wiring free of charge to consumers. In principle there is no distinction between the proposed statute and one compelling flatirons, toasters, curling irons, electric washers, refrigerators, kitchen machinery, and other appliances to be furnished free of charge by electric companies. If electric companies can be obliged by law to furnish free of charge bulbs

to make the electric current available for light for consumers, legislative power can hardly be denied to require them to furnish without charge a motor for every machine to which electric current is to be supplied in a factory or elsewhere.

Electric light companies are public service corporations. As such the rates to be charged by them are subject to reasonable regulation by the commonwealth. Weld v. Gas & Electric Light Comrs. (1908) 197 Mass. 556, 84 N. E. 101; Boston v. Edison Electric Illum. Co. (1922) 242 Mass. 305, 312, 136 N. E. 113. See Attorney General v. Old Colony R. Co. (1893) 160 Mass. 62, 86, 35 N. E. 252; Commonwealth v. Interstate Consol. Street R. Co. (1905) 187 Mass. 436, 73 N. E. 530, 11 L.R.A. (N.S.) 973, 2 Ann. Cas. 419. The proposed statute has no relevancy to rates to be charged for the use of electricity. It does not authorize any change in rates. It requires the performance of an obligation not within the scope of the functions for which the electric companies were organized. It compels such companies to undertake a new variety of service. This is outside the domain of legislation under the provisions of § 1 of Art. 14 of the Amendments to the Constitution of the United States. Chesapeake & P. Teleph. Co. v. Manning (1902) 186 U. S. 238, 247, 46 L. ed. 1144, 22 S. Ct. 881; Lake Shore & M. S. R. Co. v. Smith (1899) 173 U. S. 684, 43 L. ed. 858, 19 S. Ct. 565; Ex parte Goodrich (1911) 160 Cal. 410, 117 Pac. 451, Ann. Cas. 1913A, 56; New England Teleph. & Teleg. Co. v. Department of Public Utilities, 262 Mass. 137, 146, P.U.R. 1928B, 396, 159 N. E. 743, 56 A.L.R. 784.

We are of opinion that the enactment of the proposed bill would result in depriving electric light companies of their property without due process of law. It would not tend to promote the public health, the public safety, or the public morals, and is not permissible in the exercise of the police power. We answer "No" to questions 1 and 3. It becomes unnecessary to consider question 2.

Mr. Justice Lummus, having some interest in the questions, asks to be excused from answering.

ARTHUR P. RUGG
CHARLES H. DONAHUE
STANLEY E. QUA
ARTHUR W. DOLAN
LOUIS S. COX

To The Honorable the House of Representatives of the Commonwealth of Massachusetts:

I agree with the conclusion reached in the opinion signed by the chief justice that questions 1 and 3 must be answered "No" and that it is unnecessary to answer question 2. But I do not agree fully with the reasoning by which that conclusion is reached.

In my opinion questions 1 and 3 must be answered in the negative for the reason that the furnishing of electric light bulbs by electric companies to their customers is beyond the scope of their original undertakings to make and sell or to distribute and sell, electricity, and that the legislative power does not extend to compelling them to perform this additional service without compensation therefor or even for compensation included, di-

rectly or indirectly, in the rate charged for electricity. Since, on this ground, I reach the conclusion reached in the opinion signed by the chief justice, discussion of the statements therein to which I do not assent would serve no useful purpose.

FRED T. FIELD.

COLORADO PUBLIC UTILITIES COMMISSION

Robert M. Shea

v.

City of Aurora

[Case No. 4672, Decision No. 11506.]

Service, § 204 — Duty to serve — Municipal plant — Shortage of water.

A municipality operating a water system is not required to extend service to premises outside of the city limits when it is shown that it cannot serve more customers than it now has without injury to its resident customers, in view of an inadequate water supply.

[March 11, 1938.]

COMPLAINT *against refusal of municipal water plant to extend service outside of municipal limits; dismissed.*

APPEARANCES: Earle F. Wingren Denver, Attorney, for the complainant; R. D. Garrison, Aurora, Attorney, for city of Aurora, defendant.

By the COMMISSION: Dr. Robert M. Shea, the complainant herein, is the owner of a 40-acre tract of land in Arapahoe county, said tract being outside the city limits of Aurora, the northwest corner thereof being also the intersection of East Sixth avenue and Dayton street in Aurora. On this tract, he has erected a 7-room brick residence, a garage, and other improvements necessary for a suburban home. The complainant testified that he made application to the city of Aurora for permission to connect with the city's water system through a privately owned lateral, the tap from which would be at a point near East Sixth avenue and Dayton street, or within a very short distance of the complainant's property, he having made arrangements with the owner of this privately owned lateral to make the connection if and when the city gave him a tap; that in order to make this connection the complainant would be obliged to lay a pipe from the tap at East Sixth avenue and Dayton street to the site of his improvements, which would cost some $2,000; that he had contacted the Denver water board and arranged for the supply of water on

the condition that he first get a right from the city of Aurora and that he was ready, willing, and able to pay a reasonable charge for the tap and for the use of the city of Aurora's distributing system, or whatever charge might be prescribed for all users outside of the city of Aurora; that he sought this water supply for domestic use and some irrigation around his home, the farm land or acreage part of the 40-acre tract being irrigated from the High Line canal; that the city of Aurora would not allow the proposed connection to its distributing system or furnish the water he wanted. Thereupon, he complained to this Commission, and we directed the city of Aurora to show cause why it should not be required to comply with Shea's request. The city answered, and the hearing heretofore referred to followed.

W. J. Parrish, mayor of the city of Aurora, at the hearing, testified that during 1936 the water pressure throughout the distributing system of the city of Aurora was quite low, particularly in those sections of the city situated on high points and along the eastern section of the city of Aurora; that this shortage was so bad that at times during the sprinkling season many of the residents of Aurora were unable to get water for domestic use; that a number of places which he visited in the eastern part of Aurora were left without water several hours during the day and after sprinkling hours the pressure was very low; that in order to relieve this situation he had requested the city of Denver to invoke a rule that sprinkling be allowed on alternate days, as had been the practice other years when there was a shortgage; that most of the water users in the city of Aurora complained about this shortage occurring between 4 and 8 P.M., when there was not enough water to flush toilets; that there had been times when the city of Denver was not in a position to supply a larger amount or a greater pressure at point of connection with city system but that this would no doubt be remedied when the city of Denver connected the city of Aurora with a larger main on East Colfax as was then contemplated.

Mayor Parrish stated that the city council and he as mayor had no objection to granting a water tap off of the city's distributing system, provided the users of the city of Aurora were first supplied with a reasonable amount of water and a reasonable pressure; and that he would be pleased to see the connection made for Dr. Shea just as soon as he was certain the users in the city of Aurora were first taken care of.

The mayor further testified that at the present time there was a bonded indebtedness of approximately $173,450 which the city of Aurora incurred in connection with its waterworks system and was obliged to take care of, and that a 16-mill levy was made annually for the purpose of retiring this water debt; that all of the property within the city limits of the city of Aurora was now carrying this 16-mill levy, and in addition thereto, all of the property which had been segregated from the city since the debt was incurred, was carrying this 16-mill levy; and that no arrangements had been made as yet for charging users residing outside of the city of Aurora.

T. W. Inglehart and Walter He-

deen, councilmen, and J. E. Hiatt, 1439 Moline street, George Norton, 11534 East Colfax, and C. H. Rankin, railway and hydraulic engineer for the Commission, each testified of their own knowledge as to the shortage of water, particularly in East Aurora, during the irrigating seasons of 1936 and 1937, and that the only reason for refusing Dr. Shea a tap when the matter was presented to the city council was on account of this shortage of water for residents of the city of Aurora.

D. D. Gross, chief engineer for the Denver Board of Water Commissioners, testified that the city of Denver was placing a 30-inch water main from Capitol Hill to 10th and Monaco, and a 24-inch main to Aurora, which would connect with the Aurora system at Colfax and Yosemite, which connection, when made, would increase the pressure 20 pounds at the point of connection; that the present pressure in Aurora was approximately 39 pounds during most of the year and that this new connection would add at least 20 pounds to the pressure, making it then approximately 59 pounds; that there were at the present time 761 users in Aurora, most of whom hold $\frac{5}{8}$-inch taps; that the principal distributing main of the Aurora system is 12 inches in diameter, this being one which connects with the Denver system near East Colfax and Yosemite, and this distributing main is not large enough to supply the 761 users with maximum demand which is 3 gallons per service, per minute, particularly during the irrigating season of the year; that when the city of Denver connects its new 24-inch water main with the Aurora distributing system, there will be plenty of water at the point of connection to supply the needs of Aurora consumers at all times, and probably more, but the Aurora distributing system located beyond connecting point lacks capacity to carry or distribute the water now required by its 761 users throughout all seasons of the year.

There appears to be no objection to granting this connection to the complainant were it not for the low pressure during the irrigating season when so many complaints are being made by the residents of the city of Aurora. It was not shown that the anticipated added volume and pressure at point of connection of new city main with distributing system of Aurora will overcome this low pressure during the irrigating season.

Pursuant to agreement at hearing, the city attorney for the city of Aurora presented a statement, entitled "Additional Requested Information," as follows:

"Comes now the above-entitled defendant, by its attorney, and respectfully submits the following names of parties receiving water supplied by the water board of the city and county of Denver, Colorado, through water mains belonging to the city of Aurora, Colorado, who reside outside of the corporate limits of the city of Aurora:

"1. Names of parties receiving water as aforesaid, who reside on property that was never within the corporate limits of the city of Aurora, and who were permitted the privilege years ago:

"(a) A. J. Fitzpatrick, address Aurora, Colo., residing on south side of

E. 6th avenue, and Havana street, if said street ran beyond said 6th avenue.

"(b) U. J. Bonard, address 10500 E. 6th avenue, Aurora, Colo., and

"(c) Cary R. Pollock residing at E. Colfax avenue, and Peoria street, Aurora, Colo., said property belonging to Estate of Marie L. Hershey, deceased.

"2. Names of parties receiving water as aforesaid, who reside on property that was at one time within the corporate limits of the city of Aurora, but has been and is now segregated from said city by decree of court, but who now pay the mill levy made for the bonded indebtedness of said water system:

"(a) E. O. Johnson, Aurora, Colo. 1050 Havana street, this property is the same as formerly owned by Hedeen Dairy.

"(b) B. Incovetta, 800 Dayton street, Aurora, Colo.

"(c) Richard Champion, 700 Dayton street, Aurora, Colo."

It further appears that the three customers first above named residing in territory which was never a part of the city of Aurora and having no connection with the 16-mill levy, pay their water bills direct to the Board of Water Commissioners of the city of Denver.

From the foregoing, it appears that the city of Aurora contends that it has made no profession to serve the public generally outside the city limits of Aurora and is not a public utility; that if the contrary were true, its first duty is to its citizens; that its present distributing system cannot carry enough water at this time to adequately care for the consumers within the city limits; and that, even though it were a public utility, still it cannot be required to add new consumers to its present insufficient distributing system.

We are of the opinion that the respondent showed that it cannot serve more customers than it now has without injury to its resident customers, and therefore does not now have any surplus water for sale. We believe that such finding is determinative of the instant matter, and therefore it is unnecessary to here determine whether the city of Aurora is or is not a public utility, and that question expressly is hereby reserved for future determination should occasion require.

In the case of Pikes Peak Power Co. v. Colorado Springs (1900) 44 C. C. A. 333, 344, 105 Fed. 1, 13, the court said:

"It is true, as counsel for the city assert, that the water, the water system, and the other public utilities of a municipality are held by it and by its officers, in trust for its citizens, and for the public; that neither the city nor its officers can renounce this trust, disable themselves from performing their public duties, or so divert or impair these utilities that they are rendered inadequate to the complete performance of the trust under which they are held. . . . But it is equally true that municipalities and their officers have the power, and it is their duty, to apply the *surplus* power and use of all public utilities under their control for the benefit of their cities and citizens; provided, always, that such application does not materially impair the usefulness of these facilities for the purposes for which they were primarily created." The water system was construct-

ed primarily to serve those who paid for it.

After a careful consideration of the record, the Commission is of the opinion and finds that complainant did not establish his right to the relief sought and that said case should be dismissed.

NEVADA PUBLIC SERVICE COMMISSION

Re Nevada-California Transportation Company, Incorporated

[CPC A-442.]

Monopoly and competition, § 68 — Motor carrier operation — Inadequacy of railroad service.

Motor carrier service should be authorized, in order to create healthful competition for the interest of the public instead of building up a service which might lead or tend to lead to monopolistic control, when rail carriers have assumed the attitude of segregating each and every branch as a working unit for the purpose of abandoning or discontinuing unprofitable services and have failed to use their efforts to encourage public use.

[February 28, 1938.]

APPLICATION *for certificate of public convenience and necessity to operate auto trucks; granted.*

By the COMMISSION: For the past four and a half years this Commission has had before it at different times an application for truck service between Reno, Nevada, and Tonopah, Nevada, on one occasion; and Reno and Las Vegas, Nevada, on another occasion. There was an application filed on December 13, 1934, on which several hearings were held in Carson City and Tonopah, Nevada, beginning with the 8th day of February, 1935, and subsequent dates.

The evidence clearly showed that the applicant had been operating for some time prior to the filing of the application in 1934, under the color of a contract carrier. At the hearing in February of 1935, the protests were principally based upon the proposition that there was no need for additional service and that the rail lines were furnishing adequate service to the territory covered by the application, which was borne out, more or less, by the shippers in the territory involved. Basing its decision upon the evidence that there was sufficient service in the district, the Commission entered its order denying the application.

In January of 1936, the applicant filed a new application covering the same field—so far as service from Reno to Tonopah was concerned. The

Commission, at the hearings, indicated that it would require evidence to show that since the former order denying the application that there was a changed condition in business in the district affected.

The applicant proceeded to put on testimony in which reference was made, by both applicant and protestants, to certain testimony in the former hearing.

Prior to the filing of the application in 1934, protestants had taken the matter to the district court testing the constitutionality of the act giving the Commission authority to regulate motor truck transportation within the state of Nevada. Since the submission of the matter to this Commission in 1936, the supreme court has rendered an opinion upholding the constitutionality of the act under which this application comes, so that there is no question in the minds of the Commission, at this time, of the authority of the Commission to act in matters of this kind.

Prior to rendering its opinion, this Commission has given a great deal of thought and study to the question of convenience and necessity as relates to this applicant in the territory covered by the application; and the further proposition of healthful competition has entered into our deliberation in this particular case, which has been brought about more or less by subsequent happenings since our former ruling of 1935. Particularly has this been brought to the attention of the Commission when we consider the objections of the protestants and their attitude towards feeder rail lines in the territory involved. As stated in a former opinion rendered by this Commission, we have been particularly careful to protect the rights of those public carriers in and around Tonopah and Goldfield, realizing the importance to those districts of rail service. But, within the past two years, we have had several occasions in which the question of healthful competition has been brought to our attention, especially so where competitive service has been removed.

This was particularly exemplified in the matter of an abandonment proceeding affecting the territory involved in which the rail lines took the position that it was unnecessary for them to take into consideration improved service but merely relied upon the fact that the feeder lines were not a paying proposition. To our minds, this seems to be a departure from the former attitude taken by regulatory bodies in which feeder lines, even though operating at a loss, may be the means of the entire system operating at an advantage and helpful to the main system as a whole. We fail to understand the reasoning of that position when consideration is given to the proposition of convenience and necessity, for, to our minds, that is of paramount importance so far as the public is concerned. As we view it, it should be the policy of every utility to encourage business and to do all within their power to build up business instead of tearing down. The attitude assumed of recent years by the rail lines to segregate each and every branch as a working unit, and to judge each as a basis for continuation or abandonment, is a reasoning upon their part which we fail to understand, and a theory with which we cannot agree.

As we understand it, just as much responsibility is placed upon the rail lines as is placed upon any other public utility to use every effort within its power to encourage the public to use that which is there for its service, instead of exerting every effort to discourage business. In this particular case of abandonment, it was so apparent on the face of the record that the parties to the abandonment were only interested and concerned in the abandonment of the line at any cost, when the record showed that by a little effort upon their part in increasing and in betterment of service, the territory could have been developed into a profitable business. While in another instance we were led to believe that by granting a certificate over certain through routes, that there would be no curtailment of local freight service within the district, when in fact within a short time after the certificate was granted the local freight cars were abandoned and no effort made to increase the service claimed to be rendered; so that this Commission is of the opinion, based upon experience of the past, that if convenience and service are to be maintained over certain designated routes, that the only way it can be maintained is by healthful competition, and that it can only be accomplished by that method of having in the field two healthy competing lines seeking a betterment of service to the community affected.

Therefore, it is the opinion of this Commission that, for the interests of the public, we can accomplish more by healthful competition than by building up that service which might lead, or tend to lead, to monopolistic control. Healthful competition should render to the public a service of the highest standard, with an alert utility ever ready to serve the needs of the public at large. Such, we feel, should be the objective of this Commission so that the public will receive the best service possible. This might seem a departure from the former positions taken by the Commission, but, with the experience referred to, and a careful study of transportation facilities within the country at the present time, and the rapid progress of highway transportation, we feel that it is high time that this Commission should do everything within its power to promote and develop healthful competition for its citizens at large, as well as to encourage the advancement and development of those instrumentalities dealing in transportation.

Therefore, it is the opinion of this Commission that the application be granted along the lines as set forth in the stipulation by counsel for applicant at the hearing, in which applicant waived all territory between Reno and Hawthorne, including Hawthorne, on its southern trip, and limiting deliveries in the region between Hawthorne and Reno on the trip from the south to the north, except as to pickups between points south of Hawthorne, with no pickups between Reno and Hawthorne and intermediate points in either direction, and only deliveries north from points south of Hawthorne; and submit the following order.

[Order omitted.]

Re Pacific Electric Railway Company

[Decision No. 30650, Application No. 21467.]

Service, § 227 — Abandonment — Department of service.

1. If an applicant for authority to abandon passenger rail service can show that public convenience and necessity do not require the continued operation of its passenger service, with due consideration to the operating results, it will not be required to make a showing with respect to its freight operations, p. 362.

Service, § 233 — Abandonment — Operating loss.

2. Ordinarily it is improper for a carrier to continue the operation of a service which cannot reasonably be justified from a public transportation standpoint and one which is operated at an out-of-pocket loss that must be carried by more profitable lines of the system, p. 362.

[February 21, 1938.]

APPLICATION *for authority to abandon local electric railway passenger service; granted.*

APPEARANCES: C. W. Cornell, for applicant; Ray L. Chesbro, City Attorney, and E. J. Burns, for the city of Los Angeles, interested party; S. M. Lanham, for the Board of Public Utilities and Transportation of the city of Los Angeles, interested party; J. H. Cragin, City Attorney, for the city of Maywood, protestant; Delbert A. Hessick, City Attorney, for the city of Huntington Park, protestant; Carlton H. Kasjens, City Attorney, for the city of Bell, and Bell Chamber of Commerce, protestants; Peter Ritchie and Oliver J. Mader, for the Southeast Realty Board, protestants; George E. Archer and P. A. Barrels, for the Maywood Chamber of Commerce, protestants; Frederick J. Pimm, for Bell Chamber of Commerce, protestants.

By the COMMISSION: In this proceeding Pacific Electric Railway Company seeks authority to discontinue local passenger service on its Whittier line between down-town Los Angeles and Walker in Los Angeles county.

A public hearing was conducted on this matter before Examiner Hunter at Los Angeles on December 14, 1937.

At this hearing city attorneys of Huntington Park, Bell, and Maywood took the position that the application was incomplete, in that it did not show the freight earnings on the line. They therefore objected to the introduction of any testimony unless the company would agree to include in its showing such freight earnings, urging that if it could be shown that business on the line as a whole was profitable, the passenger service should not be dis-

continued, as any deficit from this operation should be made up from the freight earnings.

[1, 2] The presiding examiner ruled that applicant would be permitted to proceed with its showing, with respect to the passenger operation, and the question of whether or not it would be required to show the freight earnings would be referred to the Commission. It was understood that if the Commission decided that this carrier should show both freight and passenger operations on this line, a further hearing would be held to consider the results of the entire operation before action would be taken on the application to discontinue passenger service. On the other hand, if the Commission decided that the company should not be required to show the results of freight operations, the matter would be taken under submission following the testimony dealing with passenger service.

The Commission has considered this matter and has reached the conclusion that if applicant can show that public convenience and necessity do not require the continued operations of this passenger service, with due consideration to the operating results, it will not be required to make a showing with respect to the freight operations. This conclusion is based upon the fact that ordinarily it is improper for a carrier to continue the operation of a service which cannot reasonably be justified from a public transportation standpoint and one which is operated at an out-of-pocket loss that must be carried by more profitable lines of the system. Obviously, it would be unfair for the patrons of this company, considering them as a whole, both passenger and freight, to make up the losses of an unprofitable passenger service which cannot reasonably be justified.

Description of Line

The line involved herein is 8.5 miles in length and is that portion of the company's Whittier line between Los Angeles and Walker, which latter point is located a short distance east of the city limits of the city of Maywood in Los Angeles county. This line provides local transportation between the city of Los Angeles and the cities of Huntington Park, Maywood, and Bell. For convenience hereinafter, this local passenger line will be referred to as the "Walker line."

Service on the Walker line was initiated on September 1, 1935, under authority issued by the Commission's Decision No. 28145, dated August 5, 1935, on Application No. 19916. By this decision, the company was permitted to discontinue interurban passenger service on its entire Los Angeles-Whittier-Fullerton-La Habra-Yorba Linda line, except for two round trips per day, one of which was to provide service for commuters traveling to Los Angeles in the morning and from Los Angeles in the evening. The other trip was maintained to provide a combination passenger, express, and mail service. Previous to the establishment of service on the Walker line, this district was provided rail service by through trains operating over the Los Angeles-Whittier line.

Results of Operation

Exhibit No. 3 shows the results of passenger operation on the Walker line for the period January to August,

inclusive, 1937, and an estimate for this same period of 1938, as follows:

Operating income	1937	1938
Total operating revenues	$23,684	$23,684
Approximate out-of-pocket expenses (excl. taxes)	37,388	41,043
Net operating loss	*$13,704	*$17,359
Taxes	1,677	2,029
Net loss	*$15,381	*$19,388

* Red figures.

It may be noted that the estimated amount of out-of-pocket expenses for the year 1938 exceeds that for 1937 by $3,655. This increased cost results from the fact that the company has been required to increase the rate of pay of its employees for the 1938 period. It may be seen from this exhibit that, for the eight months' period of 1937, the company failed to earn the out-of-pocket costs of providing service by $13,704 and that the estimated return for the eight months' period in 1938 will fail to meet out-of-pocket costs by $17,359.

Traffic

Exhibit "C," attached to the application, shows the results of an on-and-off-traffic check taken on the Walker line for the 3-day period August 21, 22, and 23, 1937, as follows:

	Saturday August 21, 1937		Sunday August 22, 1937		Monday August 23, 1937	
	Inbound	*Outbound*	*Inbound*	*Outbound*	*Inbound*	*Outbound*
Range in number of passengers carried on each trip	1–38	2–40	2–22	3–19	1–85	4–87
Number of trips	38	38	33	33	38	38
Total number of passengers carried during the day	698	613	268	274	800	786
Average number of passengers carried per trip	18	16	8	8	21	21

Service

Service on the Walker line varies from 20- to 40-minute headways during week days,[1] with a 30-minute headway on Sundays.

Fares

The fare structure on this line consists of 5-cent zones with a maximum charge of 10 cents, with free transfer to connecting local lines in Los Angeles.

Other Public Transportation

The record shows that the district along that portion of the Walker line, between the down-town Los Angeles terminal and Slauson Junction, is afforded service by applicant's Watts local line. The district between Slauson junction and the end of the line at Walker station is provided service by the "J" and "V" lines of the Los Angeles Railway Corporation, as well as its motor coach lines.[2] There is, in fact, no point on applicant's Walker line where the distance is greater than 2,000 feet from a line of transportation of Los Angeles Railway Corporation.

It also was shown that Los Angeles Railway Corporation's operations provide a much more frequent headway

[1] *Week days*
20-minute service between 6:40 A.M. and 9:20 A.M. and 3:50 P.M. and 6:20 P.M.
30-minute service between 9:20 A.M. and 3:50 P.M. and 6:10 P.M. and 7:20 P.M.
40-minute service between 7:20 P.M. and 11:20 P.M.

[2] No. 50—Florence-Soto motor coach line;
No. 55—Maywood-Bell motor coach line;
No. 58—Slauson avenue motor coach line.

than is provided on the Walker line. In general, Los Angeles Railway Corporation maintains headways on its rail and motor coach lines in this district varying from three to twenty minutes throughout the day. In traveling on the motor coach lines, however, it is necessary to transfer to a rail line to reach the down-town area of Los Angeles. The fare on Los Angeles Railway's system is 7 cents cash or a token rate of $6\frac{1}{4}$ cents, which includes a transfer to other local lines of this carrier.

Opposition

The opposition which developed to the granting of this application centers largely around the question of service. It was the contention of the opponents that Pacific Electric Railway Company affords a more convenient and direct service between Los Angeles and the Huntington Park-Maywood-Bell section than the Los Angeles Railway system, particularly in view of the fact that, in the case of the Los Angeles Railway, it is necessary to transfer to reach a down-town point. Pacific Electric Railway Company's service, although less frequent, has a shorter running time than is offered by Los Angeles Railway Corporation by some seven minutes, due to the fact that a considerable portion of its operation is over private right of way.

Conclusions

In determining what action should be taken upon this application, due consideration has been given to the various questions which have been raised by the opposition, in the light of the affirmative showing by applicant. With respect to service, the record clearly shows that with the elimination of applicant's Walker line, the Huntington Park-Maywood-Bell district will have available the transportation service offered by Los Angeles Railway Corporation's rail and motor coach lines which are referred to above. Admittedly this service is inferior to that of Pacific Electric Railway Company in two respects—(1) it requires a transfer if the passenger originates from or is destined to a point on the motor coach lines; and (2) the running time to the down-town area is greater by some seven minutes in the case of the Los Angeles Railway service. On the other hand, the headway between cars and busses operated by Los Angeles Railway Corporation is much less than that of Pacific Electric Railway Company. When we consider the fact that passengers may transfer from the Huntington Park-Maywood-Bell area to other down-town lines of Los Angeles Railway Corporation at a token fare of $6\frac{1}{4}$ cents, or a cash fare of 7 cents, as opposed to a 10-cent fare on Pacific Electric Railway Company's Walker line, it can be understood why the major portion of the public transportation business from and to this section is enjoyed by Los Angeles Railway Corporation. In view of the fact that the line herein sought to be abandoned has been operated at an out-of-pocket loss since its inception and there appears to be little indication of an improvement in the future, with the additional fact that service is provided to the district by Los Angeles Railway Corporation, we are forced to conclude that this application should be granted.

INDIANA PUBLIC SERVICE COMMISSION

Re Indianapolis Power & Light Company

[No. 11725.]

Residents of Edgewood, Indiana et al.

v.

Indianapolis Power & Light Company

[No. 12205.]

Valuation, § 155 — Overheads — Electric utility.

1. An allowance of 20 per cent for undistributed construction costs, or general contingencies and general overhead, was considered excessive in determining reproduction cost of electric utility property, in view of evidence that approximately one-third of the property had been constructed in recent years, so that the available information was quite accurate, this accuracy being reflected in the inventory and appraisal, p. 369.

Valuation, § 307 — Cash working capital — Electric utility.

2. A fair figure for working capital, including sufficient for prepay items, was held to be $967,359 in a valuation of electric utility property having a present fair value of $50,000,000, where working cash capital computed on the basis of one-eighth of one year's operating expenses would amount to $906,262, p. 370.

Valuation, § 332 — Going concern value — Separate allowance.

3. The Commission, after considering all the evidence and being mindful of the fact that an electric utility was an operating unit and a going concern with business attached, fixed the present fair value, including all elements of value, tangible and intangible, without making a separate allowance for going concern value claimed by the utility, p. 371.

Expenses, § 118 — Uncollectible bills — Effect of reserve.

4. A public utility company having a sizable credit balance in its reserve for uncollectible bills was limited in its allowance for uncollectible bills as a charge against operating expenses to the actual amount of the uncollectible bills for the current year, it being provided that in no one year should the amount charged to operating expense for this item be in excess of 1 per cent of electric and steam sales, and that in any one year when uncollectible bills should be in excess of this percentage the excess amount should be charged against the reserve, p. 372.

Expenses, § 109 — Taxes — Accruals.

5. Tax accruals should be limited to the actual amount paid each year for taxes, although accruals may be estimated and charged to operating ex-

penses on a monthly basis with an adjustment to the actual amount before closing the books for the year, p. 373.

Expenses, § 92 — Rate case expense — Amortization.

6. A public utility company was permitted to amortize the cost of a rate investigation in equal annual instalments over a 5-year period, p. 373.

Return, § 87 — Electric utility.

7. A rate of return of 6 per cent per annum on electric utility property was held to be fair, p. 373.

[April 28, 1938.]

INVESTIGATION *of rates for electricity; rate reductions ordered.*

APPEARANCES: Clyde H. Jones, and Howell Ellis, for Indianapolis Power & Light Co.; Floyd J. Mattice, Corporation Counsel, and Jas. E. Deery, Special Assistant (at beginning of hearing Mr. Deery entered appearance as Corporation Counsel), for city of Indianapolis; Ralph E. Hanna, Public Counselor, Herbert P. Kenney, Assistant Public Counselor, and Francis K. Bowser (at beginning of hearing Mr. Bowser entered appearance as Public Counselor), for the public; John White, for Public Utility Committee of Indianapolis Federation of Community Civic Clubs, Inc.; Edward O. Snethen, Attorney, and E. J. Mink, Executive Secretary of Indianapolis Municipal League, for Indianapolis Municipal League and Indianapolis Federation of Community Civic Clubs, Inc.; Fred Schmitz, Executive Secretary, for Building Owners and Managers Association of Indianapolis; Jesse C. Moore, for Columbia School Furniture Corp., Indianapolis Glove Co. (and sixteen other companies).

By the COMMISSION: On the 29th day of December, 1933, the Public Service Commission approved an order directing the above company to appear and show cause why electric rates charged by said company should not be reduced; also ordering that the company produce evidence of the fair value of its electrical property used and useful in serving its patrons, etc.

Thereafter, conferences were held by the Commission with representatives of the company, with representatives of the city of Indianapolis, with representatives of civic organizations et al., in Indianapolis, and with the public counselor. Pursuant to these conferences, orders were approved by the Commission providing for reductions in the company's rates and charges approximating $500,000 pending the completion of an appraisal of the property of the company and a complete audit of its books and accounts, and a formal rate case.

Instructions were given the chief engineer of the Commission directing that a detailed inventory and appraisal be made of all the company's electric property used and useful in furnishing electricity to its customers; instructions were also given to the Commission's chief accountant to examine and prepare an audit of the books and accounts of respondent

company. This work has been done. The appraisal consists of 22 volumes totaling 6,047 pages. Field notes are combined in 459 volumes and the pricing data in 60 volumes. The work required 28,350 man days for engineers, 2,625 man days for comptometer operators, and 1,593 man days for typists. The maximum number of engineers working at any one time was forty-four with five comptometer operators and twenty-seven typists.

Said inventory was made as of January 1, 1935. It was itemized in accordance with the uniform system of accounts for electric utilities; broken down into 40 different classification and account numbers; and grouped according to taxing units. The property involved is located throughout Marion county and extends into Hendricks, Boone, Hamilton, Hancock, and Johnson counties. In all there are 48 separate taxing units.

A detailed inventory of each of respondent's buildings, structures, poles, manholes, and all equipment used by the company in the production and distribution of electricity and steam was made from field measurements and field observations. All details have been checked and rechecked, after which the value of the properties was determined by the engineering department on the basis of cost of reproduction new and cost of reproduction new depreciated. The taking of the inventory and the making of the appraisal was under the supervision of Mr. H. V. Wenger, chief engineer of the Commission, and Mr. Ivan T. Jacks, assistant chief engineer. The making of the audit was under the supervision of Mr. John W. Conley, chief accountant of the Commission.

Promptly after the completion of the appraisal and pursuant to notice given by publication in the *Indianapolis Times* and *The Hoosier Sentinel,* both being newspapers of general circulation printed and published in Marion county, Indiana, more than ten days before the date of hearing, and notices mailed to various interested parties, a public hearing was held in the rooms of the Commission, 401 State House, Indianapolis, Indiana, at 10 o'clock A.M., September 30, 1936, and from day to day thereafter, evidence being submitted on twenty-seven different days. On February 25, 1937, hearing in this cause was suspended and again resumed on June 23rd, the Commission again hearing evidence on eight different days and on July 22nd, hearing in this cause was adjourned. During the first day of the hearing, September 30, 1936, a petition filed on behalf of residents of Edgewood by John T. Taylor et al., Commission Cause No. 12205, was consolidated with this cause for hearing and order, and the Commission began the hearing of testimony of witnesses for the Commission, for the company, and for all others concerned. The Commission's reporters took the evidence on stenotype machines, using 11,799 folds of stenotype paper and thereafter prepared a complete transcript of the evidence which consisted of 36 volumes totaling 3,932 pages. During the hearing, 65 exhibits were introduced by the Commission, 5 by the city of Indianapolis, and 111 by the company. The transcript has been proof read and indexed. This

required approximately 1,566 hours (three people working).

On March 9, 1937, an interlocutory order in this cause was approved by the Commission. Said order further reduced the rates of the company, and effected a further saving to its customers of approximately $545,000 per annum, making the total annual savings since this case was instituted in excess of $1,000,000 per annum.

On July 6, 1937, Wm. H. Block Company, H. P. Wasson & Co., and L. S. Ayers & Co., each by their attorneys, filed separate petitions asking that their rates and charges for electric service be reviewed, adjusted, and determined. Thereafter, on January 29, 1938, L. S. Ayers & Company, by its attorney, filed a motion to dismiss its said petition.

On February 11, 1938, respondent herein filed its petition for leave to file supplemental exhibits relating to its income since the close of the evidence, and on February 17, 1938, the Commission approved a supplemental order herein, reopening this cause for further hearing for the purpose of admitting such further new and additional evidence by and on behalf of the interested parties in this cause, as the Commission, in its discretion, may deem to be in the public interest in said matter and set this cause for further hearing on Tuesday, March 8, 1938, at 10 A.M., in the rooms of the Commission. At said time and place, testimony and exhibits were submitted in behalf of respondent company. Said further hearing was thereupon suspended until March 21st, and thereafter continued to March 22nd, at which time evidence was received on behalf of ratepayers and respondent company, and at 11:30 A.M., March 22nd, said further hearing was adjourned.

The inventory heretofore mentioned as having been made by the staff of the Commission included all of the physical property of respondent company, except the radio station, coal lands, and the new office building. The inventory was checked in detail and agreed to by the company. A copy of the same was furnished to Spooner & Merrill, engineers employed by respondent company, who, in turn, made an additional check of all of the items. This agreed inventory was then used as the basis for making appraisals of the property. One appraisal was made by Spooner & Merrill for respondent company and a separate appraisal was made by the Commission engineers.

In addition to the inventory and appraisals which were introduced in evidence, testimony and exhibits were presented which showed details of the book additions to property and plant from January 1, 1935, the date of the inventory and appraisal up to April 30, 1937; also, book retirements from January 1, 1935, to April 30, 1937, that being the latest date to which these figures were available at the time that this evidence was placed before the Commission. In addition to the book additions and retirements, weighted indices were computed and presented in exhibits by both the company engineers and the Commission engineers, covering the period from January 1, 1935, to June 1, 1937. This produced the effect of

bringing the appraisal down to June 1, 1937.

[1] The testimony and exhibits show that the Commission engineers arrived at the amount of cost of reproduction, less undistributed construction costs as of January 1, 1935, to be $45,738,245, and the cost to reproduce the same property, as determined by the company engineers, Spooner & Merrill, was $46,493,542. Both groups of engineers coöperated in obtaining prices and arrived at results that were reasonably close; however, in determining the undistributed construction costs or general contingencies and general overhead, and also in arriving at the present condition of the property, the views of the engineers varied to a considerable extent. Commission engineers testified that the undistributed construction costs or general contingencies and general overhead were 17 per cent of the structural cost and Charles W. Spooner testified in behalf of the company that these same items aggregated 20 per cent of the structural cost except on general equipment on which he accepted the cost as found by Commission engineers. In view of the evidence to the effect that approximately one-third of the property has been constructed in recent years, so that the available information is quite accurate, this accuracy being reflected in the inventory and appraisal, the item allowed by Mr. Spooner for contingencies and general overhead is considered somewhat excessive. Also, Mr. Spooner testified that he figured interest at the rate of 8 per cent in calculating interest during construction, while the Commission engineers testified that they figured said interest at the rate of 6 per cent per annum. Adding the item of undistributed construction costs and general overhead of 17 per cent to the cost of reproduction new, as found by the Commission engineers produces $53,513,747, and adding 20 per cent as previously qualified for the same items to the cost of reproduction, as found by Spooner & Merrill, produces $56,769,923.

The property of the company was observed and inspected in detail to arrive at the cost of reproduction depreciated, and as of June 1, 1935, the Commission engineers determined there should be deducted for depreciation of the property $6,938,158, while Mr. Spooner testified that the amount to be deducted for depreciation to be $5,020,233. The evidence shows that the Commission engineers, in addition to making a detailed inspection while the inventory was being made, also made inspection later to arrive at the amount of depreciation existing in the property. Mr. Spooner testified that he and his staff inspected the items of property but gave very little weight to obsolescence. Deducting the amount each determined for accrued depreciation, the evidence shows the cost of reproduction depreciated, as of January 1, 1935, as determined by the Commission engineers, to be $46,575,389, and as determined by Spooner & Merrill, to be $50,749,690.

The cost to produce the property new and depreciated, as of the date of June 1, 1937, was determined by applying index figures to the various accounts as hereinbefore referred to as of Jan. 1, 1935, and the amount thus arrived at by Spooner & Merrill,

for respondent company, as testified to by Mr. Donald Cook, was an increase in cost of reproduction new of $7,535,142, or approximately 13.5 per cent, and depreciated $6,839,227. The Commission engineers arrived at an increase in cost of reproduction new of $6,862,182, or approximately 12.8 per cent and depreciated $5,971,871. The cost of reproduction new as determined by Spooner & Merrill as of June 1, 1937, was $63,305,065, and depreciated $57,568,917. The cost of reproduction new as of June 1, 1937, as determined by the Commission engineers was $60,375,929, and depreciated $52,547,460.

Material and supplies, as of January 1, 1935, as shown by the books and records of the company, was $920,150, and as of April 30, 1937, $1,076,847. During the period from January 1, 1935, to April 30, 1937, the net book additions, as shown by respondent's Exhibit 91, was $693,453. The net book additions during this same period, as determined by the Commission engineers, and as shown in the Commission's Exhibit 31, was $660,346. The difference in these two figures is accounted for by the difference in retirements as reflecting the pricing in the appraisals.

[2] Mr. Spooner testified that, in his opinion, a proper allowance for cash working capital would be $1,500,000, made up of three items, consisting of prepay items, $74,319.77; cash for operating expenses, $967,359; and a cash buffer fund, $500,000. The amount of $967,359 covers the necessary working capital and compares with a frequently used method of computing working capital on the basis of one-eighth of one year's operating expenses, which, in this case, would amount to one-eighth of $7,250,099, or $906,262.

The evidence does not show the necessity for any buffer fund. A fair figure for working capital, including sufficient for prepay items, is $967,359. Included in the inventory of the property of the company, there is certain nonused and nonuseful property; the amount of which, as determined by Spooner & Merrill, as of April 30, 1937, was $2,293,038, cost of reproduction; and $1,803,564, cost of reproduction depreciated. Commission engineers determined this property, as of the same date, to have a cost of reproduction new, $2,555,411, and a cost of reproduction depreciated, $1,989,246.

The testimony indicates that there is no definite method of allocating the property of the company as between steam and electric service. Spooner & Merrill, in Exhibit 95, allocated 12 per cent of the total used and useful property to steam heat. The Commission engineers, in Exhibit 93, show 10.7 per cent of said property to steam heat. The Commission's exhibit did not show all of the steam property, but only that portion that was directly used in rendering steam heat service. The operating revenues of the company show a ratio of approximately 90 per cent to 10 per cent, respectively, as between electric and steam. In view of the fact that the evidence shows that Spooner & Merrill went into more detail in determining the allocation of property as between the two services, in arriving at their figure of 12 per cent, the Commission considers that 12 per cent would more nearly reflect the

amount of property that should be allocated to steam heat service. The summary of the above items total as follows:

	Cost of Reproduction New	Cost of Reproduction Depreciated
Commission Engineers	$53,262,062	$46,871,234
Spooner & Merrill	$56,099,724	$51,482,651

[3] There was considerable testimony as to going concern value, cost of financing, and other intangibles. Witnesses, Spooner & Burnell, testified on this point in behalf of the company. Their opinions of going concern value varied from $8,000,000 by Mr. Burnell to $10,000,000 by Mr. Spooner. Mr. Dickerman, witness, produced by the city of Indianapolis, testified at considerable length and in considerable detail, pointing out the shortage of water supply at the various generating plants of the company, the high cost to the company of producing energy at some, if not all, of its plants, certain items of excess plant, excess transmission and distribution system, and also property now in use which should have been retired, and arrived at a minus figure as going concern value.

Testimony and exhibits were submitted for the purpose of furnishing the Commission some idea as to the historic value of the property of the respondent company. This testimony and exhibits were based on information which was available from the books and records of the company, the annual reports to the Commission made by the company, and its predecessor companies and also from previous orders of the Commission. To these items the Commission has given consideration, having at the same time in mind certain testimony by witness Dickerman and which is quoted from City Exhibit No. 3 as follows:

"The courts have declared that the fair present value of a utility property must be obtained by consideration of suitable available means. Commonly considered are evidences of actual original investment in presently useful property as shown by properly kept fixed capital accounts or book costs; by a historical cost study usually taking account of unrecouped losses through retirements and alterations before earnings provided therefor; and a reproduction cost new, less depreciation estimate. The latter has come to be one most relied upon for determining the present value. In the case of the Indianapolis Power & Light Company there are unsegregated book values for fixed capital notoriously known in part to represent anything but accurate records of fixed capital installed and retired."

The Commission, having considered all the evidence and being mindful of the fact that the utility whose property is involved in this cause is an operating unit and a going concern with business attached, now finds that the present fair value, including all elements of value, tangible and intangible, of the property of the company used and useful in rendering electric service to its customers, including all net additions to April 30, 1937, and priced as of June 1, 1937, is $50,000,000.

The evidence shows that there has been a consistent upward trend in the operating revenues of the com-

pany during the past several years. The operating expenses and gross income for various periods, as shown by the evidence and exhibits are as follows:

	Year Ending June 30, 1935	Year Ending Dec. 31, 1936	12 Months Ending May 31, 1937	Year Ending Dec. 31, 1937
Operating revenue	$9,194,037.28	$9,754,731.19	$10,184,024.27	$10,251,054.44
Operating expenses	5,997,194.61	6,554,803.62	6,761,754.12	6,745,661.66
Gross income	$3,196,842.67	$3,199,927.57	$3,422,270.15	$3,505,392.78

Testimony and exhibits introduced by the company during the reopened hearing in March, 1938, showed that there has been a downward trend in the company's revenues beginning with the latter part of 1937. At the same time there was a reduction in operating expenses and the gross income for the full year of 1937 was considerably in excess of the gross income for the year 1936. There was considerable increase in the amount of energy sold during the several months immediately following the making effective of the lower rate schedules by the interlocutory order of the Commission on March 9, 1937, the effect of which was that while the ratepayers received the benefits contemplated by the interlocutory order, at the same time the company's revenues and gross income actually increased.

[4] The testimony and exhibits introduced by the company during the last days of the hearing show that there was a decrease in operating expenses fully proportionate, if not in excess of the decrease in operating revenues and that there was but very little, if any, decrease in gross income comparing month to month of the previous year. However, there was no testimony introduced with reference to valuation of the company's property as of any date later than June 1, 1937. Therefore, the Commission in considering the amount of dollars available for return is determining this amount as of June 1, 1937. Testimony and exhibits introduced by the company show that the company anticipates that there will be increases in operating expenses during 1938 by reason of increases in salaries, wages, taxes, cost of coal, and material and supplies and other items. Evidence and exhibits also show that there have been many items charged to operating expense that are subject to question, including nonrecurring items, salaries paid where no explanation was given; although the company was given every opportunity to justify such items; increases in salaries, certain fees paid, donations, items charged to operating expense that in the opinion of the Commission should properly be charged to capital account, over accruals for uncollectible accounts, taxes, etc.; also the amount charged to operating expense and credited to depreciation reserve. The company has built up a substantial reserve for uncollectible bills and is continuing to add to this reserve by charging into operating expense each year more than the amount of the uncollectible bills during the year. Considering the sizable credit balance in this account it would appear reasonable that the company has created ample reserve to provide protec-

tion in the event that uncollectible bills should at any time exceed the average of uncollectible bills during the last five or ten years, and, therefore, the amount that the company should now be permitted to charge to operating expenses annually on account of uncollectible bills, should be limited to the actual amount of the uncollectible bills for the current year. The company may estimate the amount of uncollectible bills for the year and make their accrual on monthly basis, and then before closing their books for the year, adjust the amount accrued to the actual amount of uncollectible bills for the year with the proviso that in no one year shall the amount charged to operating expense for uncollectible bills be in excess of 1 per cent of electric and steam sales; and in any one year that the uncollectible bills shall be in excess of this percentage, then the amount in excess of said 1 per cent should be charged against uncollectible account reserve.

[5] The company has been accruing excessive amounts annually for taxes which accruals should be limited to the actual amount paid each year for taxes. Accruals for taxes may be estimated and charged to operating expenses on a monthly basis. However, the amount accrued should be adjusted to the actual amount of taxes before closing the books for the year. There was considerable evidence with reference to the depreciation reserve to the experience of the company as to average annual retirements during recent years, to adjustments made by the company in the rate of the annual accrual credited to depreciation reserve; also as to transfers from depreciation reserve direct to surplus; also as to other details and particulars. The Commission has made no specific investigation with reference to depreciation account of the respondent company, however, the amount charged to operating expenses during recent years for depreciation reserve is subject to question, taking into consideration the high maintenance expenditure and high maintenance policy of the company and the present per cent condition of the property as found by the engineers.

[6] The Commission having considered the evidence and having taken into consideration the contemplated increases in operating expenses, the trend of the operating revenues and operating expenses of the company; also the items included in operating expenses that are subject to question; now finds that the gross income of the company for the year ending June 1, 1937, is not less than $3,650,000. The evidence shows that the company's expense in connection with these proceedings, including the expenses of the making of the inventory, the appraisal, the audit; the cost of publication of notice of hearing and other expenses, and the direct expenses of the company including engineers, accountants, and attorneys employed by it, total approximately $800,000, which amount the company should be permitted to amortize in equal annual instalments over a 5-year period.

[7] The Commission having considered all the evidence as to rate of return, now finds that a fair rate of return on the present fair value of the company's property, used and useful, in rendering electric service to

its customers is 6 per cent per annum, and the amount necessary to enable the company to receive this return on the present fair value of its electric property is $3,000,000. Adding the amount necessary to amortize the rate case expense of the company during the next five years, the same being $160,000 per year, results in the total amount of $3,160,000, being required as gross operating income for the company.

The Commission having considered the present fair value of the property of the company, used and useful, in rendering electric service as of the date of June 1, 1937, and the gross income of the company available as of June 1, 1937, now finds that the amount being paid by the ratepayers should be reduced by an amount aggregating not less than $460,000, and that the new schedules of rates should be made effective by the company as hereinafter set out, which new rates are contemplated to affect savings to the ratepayers in an amount not less than $460,000.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Willis Ramsay et al.

v.

Edison Light & Power Company

[Complaint Docket No. 11576.]

Reparation, § 49 — Filing of answer — Postponement during rate litigation.

A public utility company should not be permitted to defer filing of an answer in a reparation case, on complaint of customers, until a final order has been entered by the Commission in a rate proceeding, until a final determination of proceedings pending in Federal court relating to the validity of temporary rates prescribed by the Commission, and until further order of the Commission, since the relationship between the cases will not in any event become of significant importance until the instant case has proceeded to hearing.

[March 14, 1938.]

PETITION *by public utility company for leave to defer answer in reparation proceedings pending the outcome of rate proceedings; petition refused.*

By the COMMISSION: This matter is now before us on petition of respondent for leave to defer answer until a final order has been entered by the Commission in the rate proceeding at Pennsylvania Public Utility Commission v. Edison Light & Power Company (Complaint Docket No.

11108 [21 P.U.R.(N.S.) 328]), until a final determination of the proceedings pending in the United States district court for the eastern district of Pennsylvania relating to the validity of temporary rates prescribed by the Commission in the proceeding at Complaint Docket No. 11108, and until further order of the Commission. Complainants have filed an answer to the petition opposing the prayer thereof.

In our opinion the pendency of the rate proceedings above described is not a valid reason for postponement of filing the answer in this complaint. The proceedings are unrelated except that the amount of reduction in rates for the future finally ordered by the Commission may have some bearing upon the amount of reparations, if any, to be awarded in the instant case. This relationship will not, in any event, become of significant importance until the instant case has proceeded to hearing. The Commission should have the benefit of respondent's answer prior to hearing; therefore,

Now, to wit, March 14, 1938, it is *ordered:* That respondent's petition for leave to defer filing of answer be and is hereby refused.

It is further *ordered:* That respondent be and is hereby directed to file an answer in writing duly verified by affidavit within ten days from the date of service hereof.

OHIO PUBLIC UTILITIES COMMISSION

Re Ohio Bell Telephone Company

[Formal Case No. 3307.]

Valuation, § 48 — Rate base — Additions and improvements — Recognition of cost changes.

1. Property values for the years 1926 to 1929 were determined by adding to the final value as of June 30, 1925, net property additions at cost, while property valued for the years 1930, 1931, and 1932 were determined by the exercise of the judgment of the Commission in making substantial reductions arrived at by the cumulative effect of net additions at cost, in view of the fairly constant prices during the earlier period and in view of the depression years 1930 to 1932, inclusive, p. 378.

Depreciation, § 29 — Annual expense — Experience.

2. Depreciation expense of a telephone company, in a determination of the reasonableness of rates charged in past years as a basis for reparation awards, should be measured by the actual experience of the company for the period under investigation, approximating the company's retirement losses during the period, p. 380.

Return, § 111 — Telephone company.

3. Allowances for return of a telephone company during various years, in order to determine the reasonableness of rates during such years for the

purpose of making reparation awards, were established as follows: for the years 1924 to 1929, inclusive, 7 per cent; for the years 1930 and 1931, 6½ per cent; for the year 1932, 5½ per cent, p. 381.

[April 26, 1938.]

INVESTIGATION *of telephones rates; reasonableness of rates determined and reparation ordered. See also 2 P.U.R.(N.S.) 113.*

By the COMMISSION: This day this cause came on for further proceedings pursuant to the mandates of the Supreme Court of the United States and the supreme court of Ohio.

On January 16, March 1, July 5 and 9, and September 6, 1934 (2 P.U.R. (N.S.) 113) the Commission entered orders in this cause fixing the fair value of the company's intrastate property, its revenues, expenses, and net income, determining that for the years 1925 to 1932 the company had excess earnings in stated amounts and ordering a portion thereof (found to have been collected under bond) to be repaid to the company's subscribers who had paid the same.

To review each of said orders, the company prosecuted petitions in error in the supreme court of Ohio ([1936] 131 Ohio St. 539, 15 P.U.R. (N.S.) 443, 3 N. E. (2d) 475) which affirmed said orders in their entirety.

The company thereupon appealed said cause to the Supreme Court of the United States, which on April 26, 1937 (301 U. S. 292, 81 L. ed. 1093, 18 P.U.R.(N.S.) 305, 57 S. Ct. 724) reversed and remanded it to the supreme court of Ohio for further proceedings not inconsistent with the opinion of the Supreme Court of the United States.

Pursuant to said order of reversal and mandate entered thereupon by the Supreme Court of the United States, the supreme court of Ohio vacated its former order of affirmance and reversed said orders of January 16, March 1, July 5 and 9, and September 6, 1934, and issued its mandate to this Commission accordingly.

Thereupon the Commission set this cause for hearing upon the 28th day of September, 1937, and caused notice thereof to be served upon the attorney general of Ohio, the company, and all interested municipalities.

Upon said day the Commission, after an extended presentation of the issues by counsel for the state and for the company, considered all evidence theretofore received in the consolidated and constituent causes and all proceedings taken therein to be a part of the record herein.

The Commission at that hearing expressed the hope that this case which had been pending for more than fourteen years might be brought to an early conclusion, particularly in view of the fact that the evidence upon all of the issues seemed complete.

The case had been repeatedly closed and reopened at the request of one or another of the parties. It was first closed early in 1927 and then reopened in order that the then attorney general might introduce further evidence. This entailed a delay of four years. The record was again closed in 1931

and almost immediately reopened for further evidence to be received both from the state and the company, in order to meet the requirements of rules laid down for the first time in the decision of the Supreme Court of the United States in the Chicago case. Smith v. Illinois Bell Teleph. Co. (1930) 282 U. S. 133, 75 L. ed. 255, P.U.R.1931A, 1, 51 S. Ct. 65. Thereupon much further evidence was taken and, in addition, for the purpose of saving time, large amounts of oral testimony and exhibits were stipulated from the district court record in the Chicago case into the record in this case.

Between the dates of the issuance of the orders of January 16 and September 6, 1934, much more evidence was introduced. The record contains evidence upon every substantial issue in the case.

On January 29, 1937, the Commission found the company's rates to have been reasonable from 1933 onward and at the same time ordered a rate reduction of approximately $2,000,000 annually, effective April 1, 1937, so that now the instant case involves only the years 1924 to 1932, inclusive.

With these things in mind and with a view to avoiding the presentation of further lengthy and involved evidence, as well as the delay and expense thereby entailed, the Commission at the hearing of September 28, 1937, suggested and it was thereupon agreed that representatives of the telephone company and the attorney general should meet and review the evidence in the case, to the end that agreement might be reached, subject to the Commission's approval, upon principles which, under the evidence, should control the fixing of values and the determination of revenues and expenses for the purposes of a new order to be entered herein.

Since that date negotiations have been almost constantly in progress. There have been many such meetings between the attorney general or his representatives and the representatives of the company involving suggestions and counter-suggestions and at which the respective contentions of the company and the state have been thoroughly reviewed.

Among the principal contentions of the company, hereinafter referred to at greater length, are the following:

1. That the reductions from the finding of tentative value as of June 30, 1925, made in the order of January 16, 1934, *supra*, were contrary to the evidence. Particularly was criticism directed to the deduction of $316,090 in the right of way account, $3,296,181 in the construction overheads, $535,970 for working capital, including materials and supplies, and $3,490,905 representing the total going value allowance.

2. That the Commission had greatly understated the fair value of the company's property in each succeeding year.

3. That for the period of 1925 to 1932, inclusive, the total annual expense of depreciation determined by the Commission was $16,000,000 less than the company's expense as shown in its books and more than $8,000,000 less than the actual cost of its property retirements experienced.

4. That the Commission's disallowance of approximately $2,800,000 of license contract payments made by the

company to the American company was contrary to the evidence.

5. That for these and other reasons, no refunds should have been ordered.

After waiting many weeks in the hope that the negotiations resulting from the hearing on September 28, 1937, might result in the formulation of principles which, if adopted, would enable the Commission to bring the case to a speedy conclusion, the Commission again on April 7, 1938, held a hearing, due notice of which was served upon the attorney general, the company and all interested parties. At that hearing the Commission ordered the case submitted on the record as heretofore made and considers that from the evidence heretofore received herein, all questions and issues arising in the cause and all consolidated and constituent causes and proceedings connected therewith can be finally and fully decided and determined. Despite the fact that even by that date such a formulation of principles seemed impossible of accomplishment, there have now emerged recommendations concurred in by the attorney general and counsel for the Commission and by the company. The substance of these recommendations is as follows:

Final values are recommended based upon an adherence to the Commission's final finding of value as of June 30, 1925, with adjustments for the other years involved by the use of net additions at cost as shown by the evidence, but with substantial reductions to give effect to the decline of prices during the depression years; amounts for the annual expense of depreciation for the period in a total sum substantially equal to the cost of property retirements; a refund of the total resulting excess earnings and certain procedural agreements which the Commission finds to be proper.

In view of these recommendations the Commission has reviewed the evidence and its former findings. It is a year since this case was reversed and during that time the Commission as at present constituted has studied the issues in detail. This study has been supplemented with the aid of its staff of accountants and engineers. In the Commission's view of the record, its final findings of value as of June 30, 1925, should not be disturbed and the company's claims of error as to right of way, undistributed construction costs, and going value, as well as all other complaints as to the 1925 value, should be rejected. Similarly the Commission believes that there is no reason now to disturb the former findings as to license contract costs.

In view, however, of the mandate of the Supreme Court of the United States and the recommendation of the parties, the Commission has again reviewed the evidence with respect to the two remaining questions, i.e., property values and the annual expense of depreciation for all the years, 1925 to 1932, inclusive. The Commission has also considered the year 1924.

Property Values

[1] As heretofore stated, in the final value as of June 30, 1925, which is the basis of the property values now found for the other years, no amount was allowed for the going concern value, although approximately $3,500,000 had been allowed for this item in the tentative value; likewise, in the

final value, the tentative value for right of way was reduced by more than $300,000, the amount for working capital by more than $500,000, and the amount for undistributed construction costs by more than $3,000,000. In total these reductions amounted to $7,639,146. This action of the Commission has been the subject of sharp controversy. It again has been called to the attention of the Commission, among other things, that the reductions in the amounts finally allowed for right of way and working capital were contrary to the testimony; that the reductions on account of undistributed construction costs involved, among other things, the disallowance of engineering costs with respect to some $24,000,000 of the company's property, as to which the various witnesses made an allowance for engineering, and that the Commission's allowance of 1 per cent for the item of taxes during construction was approximately $600,000 less than the amount actually paid by the company in property taxes for the year preceding the date certain. In the matter of the Commission's disallowance of an amount for going concern value, the opinion of the Supreme Court of the United States considered the question of sufficient importance to make special reference to it.

It is true that if these disputed amounts, which were allowed in the tentative value, had been left undisturbed in the final value, the final value as of June 30, 1925, would have been approximately $7,600,000 above that finally fixed; also, and equally important, that this reduction is carried into the Commission's values for each of the succeeding years.

The Commission has given serious consideration to these issues. In arriving at its overall findings in the case the Commission has felt impelled again to review these sharply disputed items of valuation and to take them into consideration in arriving at the fair value for the years subsequent to 1925. Necessarily, the Commission has also taken into consideration, as shown by the evidence, additions to the company's property of more than $150,000,000 of new property for the period. The company's standards of maintenance and efficiency in constructing telephone property have not been questioned. The net additions give effect to the trend of prices of telephone property furnished by the Western Electric Company, which was generally downward during the period when prices of other manufactured articles were increasing. The Commission is of the opinion that the effect of any fluctuation in prices is reasonably reflected by the use of the net additions. The addition of the $150,000,000 of new property during the period reflects a steady increase in the per cent condition of the company's property for each year subsequent to that of the date certain.

The Commission is satisfied (and in accord with the attorney general) that by adding to the final value as of June 30, 1925, the net property additions at cost for the years 1926 to 1929, property values altogether fair to the telephone user will have been arrived at.

With respect to property values for the remaining years, 1930, 1931, and 1932, the decision of the United States Supreme Court in the case of West v. Chesapeake & P. Teleph. Co. (1935)

295 U. S. 662, 79 L. ed. 1640, 8 P.U.R.(N.S.) 433, 55 S. Ct. 894, holds that utility property values for rate-making purposes cannot lawfully be fixed at amounts reflecting abrupt changes in price levels. As shown by the evidence, telephone construction costs remained fairly constant for the period 1925 to 1929, inclusive, and, following the depression years 1930 to 1932, inclusive, rose until in 1937 the 1925 level had been passed. Therefore, the question of fair values for the depression years requires the exercise by the Commission of its judgment under all the circumstances. With respect to the property values for these years 1930, 1931, and 1932, the Commission has made substantial reductions in the property values arrived at by the cumulative effect of net additions at cost, and has used its judgment as to what is fair. The Commission now finds as follows:

(1) *Fair Value As of June 30, 1925*

For the fair value as of June 30, 1925, the Commission adheres to the final value for the company's intrastate property as fixed in the Commission's order of January 16, 1934, *supra,* and readopts the same in the sum of $93,707,488.

(2) *Fair Value for Other Years*

The Commission further finds the fair value of the company's intrastate property for each of the years 1924 to 1932, inclusive, to be as follows:

1924	$86,873,744
1925	93,707,488
1926	102,368,197
1927	113,750,367
1928	127,088,096
1929	138,979,565
1930	147,997,653
1931	152,262,991
1932	149,423,905

(3) *Annual Expense of Depreciation*

[2] Coming to a consideration of the company's annual expense of depreciation, referred to in the opinion of the United States Supreme Court as one of the major issues, the Commission agrees with the attorney general that it should not exceed the cost of property retirements during the period.

In its previous findings the Commission measured the company's allowable expense of depreciation by the per cent of retirements to depreciable property experienced during the three years and nine months immediately preceding the date certain.

The Commission believes, however, that the actual experience of the company for the period under investigation represents more accurately the requirements for this expense, and that therefore the expense of depreciation for the period under investigation should more nearly equal the company's retirement losses during the period. This accords with the recommendation of the attorney general and the decision of the Supreme Court of the United States in West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 U. S. 63, 79 L. ed. 761, 6 P.U.R.(N.S.) 449, 55 S. Ct. 316, decided subsequently to the order herein of January 16, 1934. The total of the expense now determined is approximately $10,000,000 less than the amount claimed by the company, and approximately $1,000,000 less than the cost of its property retirements for the period 1924 to 1932, inclusive.

The following table shows in column 1 the annual credits to the depreciation reserve for the years 1924 to

1932, inclusive, i.e., the expense of depreciation charged annually by the company upon its books, and to the full allowance of which it claims to be entitled; in column 2 the company's actual annual retirements of property for the same years; and in column 3 the annual expense of depreciation now fixed in these findings:

Year	(1) Annual Credits to Reserve	(2) Annual Property Retirements	(3) Allowable Annual Expense of Depreciation
1924 ...	$4,617,442	$3,516,185	$4,168,986
1925 ...	4,972,486	4,126,456	4,498,343
1926 ...	5,430,897	6,190,277	4,955,497
1927 ...	5,873,740	5,528,233	5,552,200
1928 ...	6,518,073	6,145,265	5,526,978
1929 ...	7,531,380	5,340,394	5,399,479
1930 ...	8,299,250	6,900,795	5,967,941
1931 ...	8,600,016	7,329,479	6,311,310
1932 ...	6,940,848	4,766,723	6,369,736
	$58,784,132	$49,843,807	$48,750,470

As the result of these allowances the company's percentage of depreciation reserve to property values as now found by the Commission will be substantially lower at the end of the period than at the beginning.

In this connection the Commission notes the claim of the company that nowhere in the record did any witness dispute the reasonableness of the company's maintenance expenses which the Commission finds to have been necessary for the current maintenance of plant and equipment, nor were the rates of depreciation testified to by the company's engineers questioned by any of the witnesses. To the contrary the company asserts that these rates were investigated by the Commission's engineer, who found no fault with them. All of this, it is claimed, points to the propriety of a greater allowance for the expense of depreciation than that now made, but, as heretofore stated, the Commission is unwilling to increase its allowance on that account and rejects the company's claim for approximately $10,000,000 more than now allowed for the entire period.

(4) *Fair Rate of Return*

[3] The Commission finds, as heretofore, the fair rate of return which the company is entitled to earn on the fair value of its property to be as follows:

For the years 1924 to 1929, inclusive .. 7%
For the years 1930 and 1931 ..... 6½%
For the year 1932 ..... 5½%

(5) *Excess Earnings*

The Commission finds that for each of the years involved, 1924 to 1932, inclusive, the fair value of the company's intrastate property, the net income realized therefrom, the actual percentage rate of return, the permissible percentage rate of return, the permissible net income, and the excessive net income, are as follows:

Year	Valuation	Net Income Realized	Rate of Return	Return at Commission's Rates Rate	Return at Commission's Rates Amount	Excessive Return
1924	$86,873,744	$5,284,403	6.08%	7%	$6,081,162	
1925	93,707,488	7,163,245	7.64%	7%	6,559,524	$603,721
1926	102,368,197	7,825,352	7.64%	7%	7,165,774	659,578
1927	113,750,367	8,264,896	7.27%	7%	7,962,526	302,370
1928	127,088,096	9,517,166	7.49%	7%	8,896,167	620,999
1929	138,979,565	10,461,268	7.53%	7%	9,728,570	732,698
1930	147,997,653	10,471,707	7.08%	6.5%	9,619,848	851,859
1931	152,262,991	10,596,306	6.96%	6.5%	9,897,094	699,212
1932	149,423,905	7,746,011	5.18%	5.5%	8,218,315	
					Total	$4,470,437

With the addition of interest at 6 per cent per annum, as required by law, the total amount of the refund, plus interest, approximates $7,225,000.

The excess earnings found by exchanges and attributable thereto, are as follows: [Table omitted.]

(6) *Refunds*

The following table sets forth by years for each exchange in which exchange rates were collected under bond, the annual amounts by classes of service which the Commission finds should be repaid as representing the portion of the bonded rate increase hereby found to be excessive: [Table omitted.]

The Commission finds that all rates collected for the years 1924 to 1932, inclusive, other than the portions of the protested principal exchange rates herein ordered to be refunded, are and were reasonable, all of the excess earnings being attributable to such protested principal rates for exchange service collected by the company under bond.

All findings heretofore made in this cause, not inconsistent herewith, are readopted by the Commission. Overall, the effect of the present findings and order, now made after a review of all of the evidence, is to adopt in their entirety, as the Commission now does, the recommendations of the attorney general and the company.

Appendices, adjusted where necessary, to conform to these findings, are attached hereto and made a part hereof.

It is therefore *ordered*—(1) That the orders of this Commission of January 16, March 1, July 5 and 9, and September 6, 1934, *supra*, are vacated, set aside, and held for naught.

(2) That said company refund in cash (or by check) or credit upon existing indebtedness to its subscribers in the several bond exchanges who received service of the classes enumerated in finding (6) accompanying this order, annual sums at the rate of the annual refund therein shown, together with interest thereon at the rate of 6 per cent to the date at which repayment is made available to the subscriber. Subscribers who received service for less than any year shall receive refunds pro rata. Refunds shall be made only for that part of the period January 1, 1925, to December 31, 1931, during which the respective rates were in effect under bond and shall, as to each subscriber, be limited to the class of service which he received and to the period during which he received it.

Provided, however, that if any of the principal sums ordered repaid shall not have been claimed by the subscribers and patrons entitled thereto within one year from the time it shall become due and payable, in accordance with this order, all such unclaimed moneys shall forthwith be paid by the company to the treasurer of the county or such other political subdivision wherein is located the exchange in which said new schedule is effective for the benefit of its general fund as provided by law.

(3) That the company proceed not later than thirty-five days from the effective date of this order with the necessary accounting for and preparation of refund vouchers or credits; that it promptly begin, not later than

ninety days from the date of this order, and complete with all speed, the actual repayment to subscribers and report to the Commission from time to time the progress of such refunder.

Provided, however, that if a protest or application for rehearing shall be filed, then the aforesaid periods of thirty-five and ninety days, respectively, shall be computed from the last date upon which a right of judicial review might be sought, if none is sought, or from the date of affirmance of this order, if it shall be affirmed upon judicial review.

(4) That the findings and orders made and now entered herein shall constitute the full, complete, and final findings and orders in this and all consolidated and constituent causes and proceedings connected therewith.

(5) That the liabilities of said company and its sureties given in this cause, whether upon their several bonds executed and in effect in the constituent cases pursuant to § 614-20 of the General Code of Ohio or otherwise, shall be discharged and terminated when and as repayment of excessive charges shall have been made in accordance with this order; and all the constituent cases are hereby dismissed except as to the company's liability to make such repayment and it shall be so noted upon the docket in each such case.

(6) That except to the extent of the portions of bonded exchange rates found to be unreasonable and excessive and ordered to be repaid herein, all rates and charges heretofore collected by the company and its predecessors are approved and established as the lawful rates for the period during which they were in effect.

(7) It is *further ordered* that this order shall take effect and be operative this 26th day of April, 1938, and that a copy of this order shall forthwith be served on The Ohio Bell Telephone Company and like copies furnished to the Honorable Herbert S. Duffy, attorney general of the state of Ohio, to the mayor of each interested incorporated municipality in which is located any exchange enumerated in finding (6) accompanying this order, and to the clerk of the supreme court of Ohio.

(8) That the Commission's jurisdiction of this matter be and hereby is retained for the purpose of making by it such audit and check herein or further order in aid of this order as may be necessary and proper in the premises.

(9) All protests, applications for rehearing, requests for leave to introduce separate evidence with respect to the separate bond cases, and all other requests, protests, applications, and objections heretofore made or filed are hereby overruled and exceptions are noted in behalf of all parties.

UTAH PUBLIC SERVICE COMMISSION

Re St. Joseph Water & Irrigation Company

[Case No. 2086.]

Rates, § 267 — Metering — Water service.

1. Residential users of water should all be metered, p. 385.

Rates, § 137.1 — Comparisons — Municipal and private companies — Effect of taxation.

2. Rates charged by a private water utility in a district where taxes of residents are low can be somewhat higher than rates charged in a city where property is assessed to aid in the maintenance and operation of a municipal water utility and such rates still be comparatively reasonable, p. 385.

Rates, § 313 — Combined billing — Garage or business in connection with residence — Minimum charge.

3. A garage or business operated in connection with a residence should be separately metered for water service, or the minimum applying to both should be charged if water is drawn through one meter, p. 385.

Rates, § 307 — Meter installation charge — Water utility.

4. A charge of $20 is an excessive amount to require of new customers for meter installation unless the actual cost of such meter installation equals that amount, p. 385.

Rates, § 307 — Meter installation charge — Proration.

5. Regulations of a water utility company establishing a meter installation charge ranging up to $20 should provide that the charge be prorated over not less than twelve months, p. 385.

[May 16, 1938.]

APPLICATION *by water utility for authority to increase rates; denied in part, granted in part, and rulings made on tariff provisions.*

APPEARANCES: Harry S. Joseph, for applicant; Thomas Luker and R. Steenblik, for citizens of North Salt Lake.

By the COMMISSION: By application filed April 11, 1938, the St. Joseph Water and Irrigation Company seeks permission to publish a new schedule of rates, rules, and regulations governing the sale of water to the parties residing in the territory served by the company.

The matter came on regularly for hearing before the Commission at its office in the state capitol, Salt Lake City, Utah, May 4, 1938, after due notice given interested parties by the Commission and by publication of notice of hearing by the applicant.

Several customers appeared at the hearing and protested the granting of the application.

From the testimony introduced at said hearing for and in behalf of applicant and protestants, and from the records and files in the case, which are made a part hereof by reference, the Commission finds:

That the St. Joseph Water and Irrigation Company is a corporation supplying culinary water to users in the vicinity of North Salt lake in the south end of Davis county, and has been rendering said service since 1913. That there is at all times an ample supply of water available for all present or prospective users.

That the total revenues under the present rate schedule of the company are not adequate to meet operating costs, depreciation, and bring a moderate return on the investment.

[1] That the present residential users should all be metered, and should also be encouraged to use, beneficially, more water in and about their homes.

[2] That the tax levies on persons residing in this district are very low, partially by reason of the fact that property owners are not subject to a levy for maintaining a water system, or for any other municipal expense, and therefore the rates charged by a private water utility can be somewhat higher than rates charged in a city where property is assessed to aid in the maintenance and operation of a municipal water utility, and such rates still be comparatively reasonable.

That the minimum residential rate proposed in the new tariff is reasonable and just.

[3] That the proposed gallonage rate is excessive. That the rates for horses, cattle, hogs, lawns, and gardens, etc., are unnecessary in that such service should be metered. That where a garage or business is operated in connection with a residence, each should be separately metered, or the minimum applying to both should be charged if water is drawn through one meter.

That with proper metering, the proposed Rule No. 6 of Rules and Regulations would be unnecessary.

[4, 5] That $20 is an excessive amount to require of new customers for meter installation unless the actual cost of such meter installation equals said amount; also the regulations should provide that the charge made be prorated over not less than twelve months.

That proposed Rule No. 8 is a repetition of Rule No. 7.

It is therefore *ordered*, that the application to increase the gallonage rate shall in all cases be denied, but that the application to increase monthly minimum rates shall in all cases be approved except that charges for live stock and gardens shall be eliminated.

Ordered further, that proposed Rules Nos. 6 and 8 shall be eliminated and that in Rule No. 7 the provision requiring a payment of $20 per meter installation shall be eliminated and a provision in lieu thereof be substituted fixing the actual cost as the charge for meter installation provided it does not exceed $20, such amount to be charged on a monthly basis over a period of not less than twelve months.

Ordered further, that all present

users other than the Bamberger Electric Railroad Company be provided with meters on or before June 1, 1938, at the expense of the company.

Ordered further, that applicant be permitted to file rates, rules, and regulations in accordance herewith, the same to be effective on and after June 1, 1938, provided tariff is filed ten days prior thereto.

NORTH DAKOTA BOARD OF RAILROAD COMMISSIONERS

Re Montana-Dakota Utilities Company

[Case No. 3687.]

Discrimination, § 110 — Rebate — Guaranteed price for gas — Heating purposes.

A guaranty of the price for the sale of gas for heating purposes, in written contracts of a gas utility with certain customers, was held to be a violation of the tariff rates, and such contracts were held to amount to a rebate in rates, granting an undue preference which should be discontinued.

[May 7, 1938.]

INVESTIGATION *of violation of tariff rates by guaranteeing the price of gas for heating purposes; discrimination ordered to be discontinued.*

By the COMMISSION: A duly verified complaint having been filed with this Board on the 1st day of February, 1938, alleging that the Montana-Dakota Utilities Company, in the sale of gas to its customers at Williston, North Dakota, was guilty of unfair and undue discrimination and of granting to some of its customers rates violative of its schedule and tariffs of rates filed with this Board and asking that a public hearing be had upon said complaint and that such alleged violations of tariff rates be investigated by this Board; and this Board having caused proper notice of hearing on said complaint to be given to the said Montana-Dakota Utilities Company and to the parties interested in said investigation, the said hearing having been ordered to be held at the city hall in the city of Williston, North Dakota, on the 15th day of February, 1938, and the said hearing having later been postponed to the 24th day of February, 1938, and due and proper notice of such postponement having been given; and on the 24th day of February, 1938, at the hour of 9 o'clock A.M., at the city hall in the city of Williston, North Dakota, the said matter having been called for hearing before Ben C. Larkin, as President, Elmer W. Cart and S. S. McDonald, as members of the Board of Railroad Commissioners, and John F. Sullivan of Mandan, North Dakota, and William Owens

of Williston, North Dakota, appearing as Attorneys for the Montana-Dakota Utilities Company, and Charles A. Verret, Commerce Counsel, appearing as Attorney for the Board of Railroad Commissioners; and the testimony and evidence adduced at such hearing having been taken and transcripted, and the transcript thereof together with all exhibits offered in evidence at said hearing being before this Board; and it appearing satisfactorily from the evidence adduced that the said Montana-Dakota Utilities Company did in the year 1937 and for the heating season of 1937–1938 enter into written contracts with at least three of its customers at Williston, North Dakota, to furnish gas for heating purposes at a guaranteed price for the said season for each of said customers; and it appearing satisfactorily to this Board that a guaranty of price for the sale of gas for heating purposes in the form and in the manner disclosed by the testimony herein is a violation of the tariff rates of said Montana-Dakota Utilities Company for the sale of gas for heating purposes at Williston, North Dakota, and that the said contracts amount to a rebate in rates for the services therein described and grant to the contracting customers aforementioned an undue preference, and that the said practice should be discontinued.

It is, therefore, *ordered* that the Montana-Dakota Utilities Company may be, and it is hereby *ordered* to cease and desist, unless and until permitted by the Board so to do by proper amendments to its schedules of rates applicable to the city of Williston, North Dakota, from guaranteeing by written contract or otherwise to any of its customers at said city of Williston, sale of gas for any and all purposes at a fixed price, or at a sum not exceeding a certain stated and fixed price for any period of time, or to agree in any manner to sell gas at any rate per thousand cubic feet used less than the amount provided therefor in its approved schedule and tariff of rates.

ARIZONA CORPORATION COMMISSION

James Walker et al.

v.

City of Phoenix

[Docket No. 7403–E–607, Decision No. 9710.]

Municipal plants, § 11 — Commission jurisdiction — Extraterritorial service.

1. A city in furnishing water service for compensation to individuals, companies, and corporations outside of the city limits, acts in a proprietary capacity and is subject to the laws and the rules and regulations of the Commission with reference thereto, p. 388.

Rates, § 246 — Approval of increase — Municipal plants — Extraterritorial service.

2. A municipality furnishing water service outside of its city limits cannot advance rates for such service until express approval thereof has been given by the Commission, p. 388.

[April 29, 1938.]

CITATION *requiring city to show cause why it should not be held to be a public service corporation as to service outside of city limits and subject to Commission jurisdiction; jurisdiction of Commission sustained and investigation of proposed advances in rates ordered.*

APPEARANCES: Irving Jennings, Attorney, for the city of Phoenix, defendant; E. O. Phlegar, Attorney, for James Walker, et al., complainant.

By the COMMISSION: [1, 2] The issue raised by the complainant herein is whether or not the city of Phoenix, a municipality, in the service of water for compensation to persons or corporations living outside of the city limits is subject to the jurisdiction of this Commission as to the reasonableness of its rates, rules, and regulations for such service. The citation issued on the 16th day of April, 1938, required the city to show cause, if any there be, why it should not be held to be a public service corporation as to service outside of its city limits and subject to our jurisdiction.

The same issue was involved in the case of Harrer v. Phoenix, Docket No. 383, April 15, 1918, P.U.R. 1918D, 352. Therein we reviewed the subject somewhat comprehensively citing many authorities holding that when a municipality goes beyond its municipal limits in the rendition of services of a proprietary nature as distinguished from governmental capacity it must comply with all of the laws, rules, and regulations applicable to a private individual or corporation. It was our conclusion and we found that the city was subject to our jurisdiction and we issued appropriate order to that effect.

The city appealed from our decision. The superior court of Maricopa county sustained our action. Thereafter appeal was taken to the supreme court. The city failed in some respect to perfect its appeal and the supreme court dismissed it without passing upon the merits of the case. The question has not, therefore, been determined by the highest judicial tribunal.

Our opinion and decision in the Harrer Case will be annexed hereto as Appendix A and made a part hereof. [Appendix A omitted as it is published in full in P.U.R.1918D, 352.]

Developments since the Harrer opinion have served to strengthen our conclusions set forth therein. We emphasize the belief that the framers of our Constitution did not intend that a very considerable portion of our people should be left entirely out of the protection that it accords the citizens of the state. We therefore

reiterate our conclusion that the provisions of the Constitution excepting from the jurisdiction of this Commission municipalities intended that the exception should apply solely to the acts of municipalities in their governmental capacity and within their municipal limits and that when they pass beyond those limitations the exception is not applicable.

The instant case affords excellent justification for this conclusion. The United States Census of 1930 gave to the city of Phoenix a population of approximately 48,000 within the city limits and to the city and its immediate environments, designated by the Census Bureau as a metropolitan area, 92,000. Thus it will be observed that within this comparatively small district there would be 44,000 people potential victims of a rule that would exclude them from any protection against excessive rates for the service of water for domestic purposes by the city of Phoenix. It is perfectly safe to assume that no member of the Constitutional Convention now living would say that it was his intention to leave almost 50 per cent of the people without recourse in the case of alleged unreasonableness of rates and charges for water service, and that would be the case in the event that our conclusions are in error since the Constitution makes this Commission the sole and exclusive authority in the determination of the reasonableness of rates of public service corporations. There is no other source to which the complainants herein and others similarly situated might apply for relief.

For the reasons herein set forth and those contained in the Harrer Case, *supra,* we are of the opinion and find that in the service of water for compensation to individuals, companies, and corporations outside of its city limits, the city of Phoenix is acting in a proprietary capacity and that it is subject to the laws of the state and the rules and regulations of this Commission with reference thereto and that in conformity with the provisions of the statute it cannot advance its rates for such service to the people living outside of the city limits of Phoenix until express approval thereof has been given by this Commission. In conformity with these findings,

It is hereby *ordered* that a further hearing in this case shall be held at the office of the Commission on May 27, 1938, for the purpose of taking testimony to determine the reasonableness of the proposed advances and to otherwise go into the merits of the case.

It is *further ordered* that until this Commission hands down its final decision herein approving or denying the proposed increases the city of Phoenix shall continue the rates, rules, and regulations which were in effect on and prior to March 10, 1938.

WISCONSIN PUBLIC SERVICE COMMISSION

Re La Valle Electric Light Company

[CA-546.]

Electricity, § 2 — Functions of Commission — Managerial matters.

The election as to whether there shall be additional installation for generation of electricity instead of purchasing power, where there is no material difference between the cost of purchased power and the cost of its generation by the utility itself, should rest with the utility company, although if at some future time the cost of generating energy locally should prove to be materially greater than the cost of purchased energy, that excess could not properly be considered as a part of allowable operating expense in the determination of rates.

[April 21, 1938.]

APPLICATION *by electric utility company for authority to install a Diesel engine and generator; granted.*

By the COMMISSION: This application was filed with the Commission on January 24, 1938. Hearing was held before examiner W. A. Anderson at Madison on February 1, 1938. The appearances were: Of the Commission staff: W. A. Kuehlthau, Engineering Department, and W. E. Caine, Rates and Research Department; applicant, La Valle Electric Light Company, by L. J. Duddleston, La Valle, and H. A. Hinkley, Reedsburg.

The La Valle Electric Light Company is operated by Duddleston Brothers in connection with a feed and roller mill. The present generating equipment of the applicant consists of a 37.5-kilovolt ampere alternator belt driven by a single cylinder 60-horsepower Diesel engine and a 60-kilovolt ampere alternator belt driven by a water wheel. The water wheel driven alternator is so arranged that it can also be driven by a standby gasoline engine. There is no tie-in of the utility with any other source of power.

The present Diesel engine was installed approximately eleven years ago and testimony is to the effect that it cannot at the present time develop its full rated capacity. The maximum output from the Diesel unit is about 25 kilowatts and that of the water wheel about 30 kilowatts, while the gasoline standby unit is capable of developing about 25 kilowatts. On December 29, 1937, the peak load on the system was 52 kilowatts.

The creamery in the village has two 7.5-horsepower motors and the butcher shop has one 5-horsepower refrigerator motor. When these motors start, serious line surges result. Unless both the Diesel engine and the water wheel are in operation when these two heavy consumers make demands upon the system, the voltage

and frequency are materially reduced.

At the present time it is necessary that both the Diesel engine and the water wheel be in concurrent operation about three days a week to overcome line surges. Under this operating practice there is a waste of the none too plentiful water with a small load on the water wheel, the hydro plant being a "run of the stream" type with practically no storage capacity. Normal operation consists of water-power generation from about 11 P.M. to 7 A.M. and Diesel power supplemented with water power at peak times during the balance of the 24-hour period.

To take care of the situation the applicant proposes to make an expenditure of $7,600 of which amount $5,410 will be for a Diesel engine, $300 for a building extension, and $1,890 for an electric generator. The price of $1,890 for a secondhand electric generator appears high when compared with the price of a new generator.

In the course of its negotiations to increase its present inadequate supply of power the applicant discussed with the Wisconsin Power and Light Company the possibility of obtaining a portion of its supply of energy from that company. Subsequent to the hearing, at the suggestion of the Commission's staff, further negotiations were had with the Wisconsin Power and Light Company to learn if it were not possible to obtain a more advantageous source of supply by the building of a transmission line and substation at which the applicant would obtain a supply of purchased power for part of its needs. The Commission's staff, after making such suggestion to the applicant, also made a study to learn if some plan were available whereby supplemental power might be more advantageously obtained. The estimated annual cost of purchased power under a rate offered by the Wisconsin Power and Light Company, if the average monthly demand did not exceed 18 kilowatts and assuming a purchase of 101,220 kilowatt hours per annum, would be $2,461. The estimated annual cost of generating with both the present generating equipment and the proposed new Diesel unit would be $4,236; while the operating cost of the existing plant, when used to reduce peaks in three months of the year, was estimated at $1,890. The estimated additional cost to the utility of the operation of the proposed Diesel extension is $2,346, as compared with the estimated cost of $2,416 for purchased power. Accordingly the annual expense of the utility for generating current, with the facilities as proposed, would be only about $115 annually less than if it purchased supplemental power from the Wisconsin Power and Light Company.

The Commission's engineers have pointed out to the applicant, however, that from a long-time point of view the cost of generation compared with purchase as above indicated might be reversed, because of the fact that the present hydro generating unit will be inoperative in a few years by reason of silt filling the pond and of deterioration of the dam. It was also indicated to the applicant that at the end of approximately eight years the necessity for additional generating equipment would likely again arise, so that the installation of additional power and generating equipment at this

time might result in the future in considerably higher costs for power if generated locally than if purchased from a transmission line of a utility.

The suggestions resulting from the negotiations with the Wisconsin Power and Light Company were given careful consideration by the applicant. It has elected, however, to proceed with the purchase of the new Diesel engine and the generator, as indicated in a letter to the Commission dated March 23, 1938, giving as its reason that the utility was operated in connection with a feed plant which could not properly operate its feed mill with purchased power; that with its labor organization it would be impossible for it to successfully keep its demand below 18 kilowatts; that an investment of approximately $2,000 would be required to build a line to connect with the Wisconsin Power and Light Company's transmission line; and its feeling that its record for continuous operation was better than what it could expect by connection with the Wisconsin Power and Light Company.

In making its estimates the engineering staff did not contemplate that the feed mill would be electrically operated so long as the hydro plant remained in service.

The Commission considers that, in a situation of this kind, where there is no material difference between the cost of purchased power and the cost of its generation by the utility itself, the election as to which method shall be adopted should rest with the applicant. If at some future time, however, the cost of generating energy locally should prove to be materially greater than the cost of purchased energy, that excess could not properly be considered as a part of allowable operating expense in the determination of rates for the utility. That election having been made and the necessity of a source of additional energy being so obvious, but one conclusion can be reached.

The Commission therefore finds:

1. That the installation of a new Diesel engine and an additional generator together with an extension of the building of the La Valle Electric Light Company, a public utility of this state, will not substantially impair the efficiency of the service of such public utility;

2. That such addition to and extension of the plant of such utility at an estimated cost not exceeding $7,600 will not provide facilities in excess of its probable future requirements; and

3. That such additional facilities will not, when placed in operation, add to the cost of service rendered by said public utility without proportionately increasing the available quantity thereof.

It is therefore *ordered,* that a certificate of authority be and hereby is issued to the La Valle Electric Light Company to install a new Diesel engine and a generator, and to make necessary building extensions; all at a cost not to exceed $7,600.

KOVARSKY v. BROOKLYN UNION GAS CO.

NEW YORK SUPREME COURT, APPELLATE DIVISION, SECOND DEPARTMENT

Marcel Kovarsky

v.

Brooklyn Union Gas Company

(253 App. Div. 635, 3 N. Y. Supp. (2d) 581.)

Parties, § 3 — Representative form of action — Complaint against charge.

1. The representative form of action is proper when a customer sues in his own behalf and in behalf of all other consumers of gas similarly situated to restrain a public utility company from imposing a charge for restoration of service temporarily discontinued, p. 394.

Commissions, § 17 — Jurisdiction — Statutory limitations.

2. The Commission has only such powers as are specifically conferred by statute or necessarily implied therefrom, p. 395.

Commissions, § 28 — Jurisdiction — Questions of law.

3. It is not the function of the Commission to determine questions of law, p. 395.

Rates, § 45 — Commission jurisdiction — Legality of charge.

4. The Commission is without power to determine whether a service-restoration charge is forbidden by a statute which prohibits service charges, p. 395.

Rates, § 280 — Restoration charge — Legality under statute — Prohibition against service charge.

5. A charge by a gas utility for restoration of service which had been temporarily discontinued, the service rendered by the utility consisting solely of unlocking the meter, is illegal under Public Service Law, § 65, subd. 6, which prohibits service charges, p. 395.

Rates, § 294 — What constitutes service charge.

6. A charge which a customer of a gas utility has to pay if he uses no gas is a service charge made for readiness to serve, while if the customer pays nothing unless he uses some gas it is not a service charge but a rate, p. 395.

(DAVIS and ADEL, JJ., dissent.)

[April 8, 1938.]

INJUNCTION *suit to restrain gas utility company from making a charge for restoration of service temporarily discontinued; order of lower court granting motion to dismiss complaint and judgment dismissing complaint on the merits reversed and motion denied.*

Argued before Carswell, Davis, Johnston, Adel, and Close, JJ.

APPEARANCES: Israel Beckhardt, of New York city, for appellant;

Jackson A. Dykman, of Brooklyn (Dimitri G. E. Eristoff, of Brooklyn, on the brief), for respondent.

CLOSE, J.: The plaintiff in this action seeks to enjoin the defendant from exacting payment of a charge of $1.02 for the restoration of gas service which had been temporarily discontinued. His complaint has been dismissed for lack of jurisdiction and for failure to state a cause of action. The action, by appropriate allegations, is brought in behalf of the plaintiff and all other consumers of gas similarly situated.

In his complaint he alleges that he resides in Brooklyn and is a private consumer of gas supplied by defendant; that defendant is a domestic gas corporation engaged in supplying gas to consumers in Brooklyn by virtue of various franchises; that on May 16, 1928, defendant filed with the Public Service Commission a schedule of rates, which is still in effect, and which contains under § 2, subd. X(b), the following provision: "(b) Where at the request of the consumer, service is temporarily discontinued and the period of such discontinuance shall not exceed six months, a reconnection charge of $1 shall be paid by the consumer upon resumption of service."

That on June 5, 1936, at the plaintiff's request, defendant discontinued the supply of gas to his residence and locked the meter; that on September 9, 1936, at the plaintiff's request, defendant unlocked the meter and restored the gas supply; that on October 6th, defendant billed the plaintiff for $1.91, consisting of $1 as a reconnection charge, 2 cents as a sales tax on such charge, and 89 cents for gas furnished; that the plaintiff paid only the 89 cents, and that defendant has continued to send bills for the reconnection charge and sales tax and has threatened to discontinue the supply of gas unless such bill is paid; that such reconnection charge is illegal and contrary to the provisions of § 65, subd. 6, of the Public Service Law; and that prior to the commencement of the action the plaintiff complained to the Public Service Commission, which refused to take any action.

The appeal raises three questions of law: (1) Whether the plaintiff may bring a representative action; (2) whether the plaintiff has an adequate remedy at law; and (3) whether the reconnection charge is prohibited by § 65, subd. 6, of the Public Service Law.

[1] The representative form of action is proper. Section 195 of the Civil Practice Act; Whitmore v. New York Inter-Urban Water Co. (1913) 158 App. Div. 178, 142 N. Y. Supp. 1098. The same duty to the community exists in the case of a gas corporation as in the case of a water company. Transportation Corporation Law, § 12; Public Service Law, § 65, subd. 1. Marsh v. Kaye (1901) 168 N. Y. 196, 61 N. E. 177, and Bouton v. Van Buren (1920) 229 N. Y. 17, 127 N. E. 477, are not authorities to the contrary. The complaint in each of those cases was dismissed because, under the facts alleged, no cause of action in equity was stated, and not because of the representative form of action. Here the complaint was dismissed upon the ground that the plaintiff had an adequate remedy at law.

The defendant's argument in support of that determination is as fol-

lows: The Public Service Commission has exclusive jurisdiction to determine the rates and charges to be made by a public utility company. Upon the complaint of twenty-five or more consumers, the Commission may investigate and revise any such charge. Public Service Law, §§ 71, 72. If the Commission fails to act upon the complaint, it may be compelled to do so by mandamus. If it acts unfavorably to the complainant, its determination may be reviewed by certiorari. The defendant concludes that the plaintiff must make such an application to the Commission (in which at least twenty-four other consumers must join), followed by either mandamus or certiorari if no relief is granted by the Commission. The defendant says also that the acceptance by the Public Service Commission of the rate schedule amounted to an allowance of all the rates and charges contained therein, and that such action is reviewable only in certiorari.

[2-4] These arguments are based on a misconception of the functions of the Public Service Commission. The Commission has only such powers as are specifically conferred by statute or necessarily implied therefrom. People ex rel. Municipal Gas Co. v. Public Service Commission, 224 N. Y. 156, P.U.R.1918F, 781, 120 N. E. 132. The legislature has clothed it with the power to fix just and reasonable rates and charges, after hearing and investigation. Public Service Law, §§ 66, 71, 72. The evident intent is that the Commission shall function as a fact-finding body; that, where a rate or charge is permissible at all, the Commission shall determine what amount is just and reasonable. It seems equally evident that it is not the function of the Commission to determine questions of law. "The Commission has no judicial functions to discharge." People ex rel. New York Steam Co. v. Straus, 186 App. Div. 787, 798, P.U.R.1919C, 1014, 1024, 174 N. Y. Supp. 868, 875.

The plaintiff in this action does not claim that the reconnection charge is unjust or unreasonable in amount. He claims that any charge at all is forbidden by the statute. The question which he raises is purely one of law, and the Public Service Commission is without power to determine it.

The cases cited by defendant involved the reasonableness of the charge made where some charge was authorized by law. There is no doubt that, in such a case, resort must be had to the Public Service Commission in the first instance. But the rule is otherwise when the only point at issue is whether any charge at all is authorized. The conclusion necessarily follows that the plaintiff has no adequate remedy before the Public Service Commission, or at law, and that the action in equity will lie.

[5, 6] The last question is whether the reconnection charge is a service charge and hence prohibited by § 65, subd. 6, of the Public Service Law. Of course, if the charge is not prohibited by law the complaint states no cause of action. Section 65, subd. 6, reads as follows: "Service charges prohibited. Every gas corporation shall charge for gas supplied a fair and reasonable price. No such corporation shall make or impose an additional charge or fee for service or for the installation of apparatus or the use of apparatus installed."

This subdivision was enacted by Chap. 898 of the Laws of 1923, apparently for the purpose of overcoming the decision of the court of appeals in Rochester v. Rochester Gas & E. Corp. 233 N. Y. 39, P.U.R. 1922C, 793, 802, 134 N. E. 828. The defendant in that case was charging its customers, in addition to a fixed rate for gas consumed, a service charge of 40 cents a month. The action was for an injunction restraining the collection of the service charge. It was held by the court of appeals that the charge was not unlawful. The opinion of Cardozo, J., contains a discussion of the nature and propriety of a service charge. The charge was defined as follows: "It is compensation for expenses that must be incurred to put the meters in such a condition that the use may be enjoyed."

As stated above, the law was amended at the next legislative session so as to prohibit any service charge. It is a fair conclusion that the service charge which the legislature had in mind was the kind of charge discussed and defined in the city of Rochester Case, that is, a charge made to meet the expense of putting the meters in usable condition.

The reconnection charge involved here falls squarely within that definition. So far as appears from the complaint, the service rendered by defendant consisted solely of unlocking the meter.

The test to apply is this: Does the customer have to pay if he uses no gas? If he does, it is a service charge. It is a charge made for "readiness to serve." Rochester v. Rochester Gas & E. Corp. *supra*. If the customer pays nothing unless he uses some gas, it is not a service charge but a rate under the jurisdiction of the Public Service Commission. McCormick v. Westchester Lighting Co. (1933) 238 App. Div. 845, 262 N. Y. Supp. 950.

The defendant contends that the reconnection charge is some kind of a peculiar charge which is sui generis. The argument is that the charge is made for a special service to a particular consumer. That may be conceded, but with the qualification that the same charge in the same amount is made against all consumers who demand that service. In any event, I cannot see how the charge is any different in nature from a charge "for the installation of apparatus," which is expressly forbidden by the statute. Certainly the installation of apparatus requires personal service to a particular consumer, just as much as the unlocking of the meter which constitutes the reconnection.

It follows that the reconnection charge described in the complaint violates the statute. The court has jurisdiction and the complaint states a cause of action.

The order and judgment should be reversed on the law, with $10 costs and disbursements, and the motion denied, with $10 costs.

Order and judgment reversed on the law, with $10 costs and disbursements, and motion denied, with $10 costs, with leave to answer within ten days from the entry of the order hereon.

Carswell and Johnston, JJ., concur.

Davis, J., with whom Adel, J., concurs, dissents and votes to affirm, with memorandum.

DAVIS, J. (dissenting): The provisions of § 65, Public Service Law, are not applicable to the state of facts presented on this record. The words "an additional charge or fee for service or for the installation of apparatus or the use of apparatus," subdivision 6, mean such charge may not be exacted where the service, installation, or use is for the benefit of the gas company in rendering service from which it ultimately derives compensation from the consumer.

Here, as the record sufficiently shows, the defendant was asked to render special service not required by all consumers. That was to lock the meter when plaintiff went away on vacation during the summer months, to the end that no one else could use gas at plaintiff's expense during that period, and then to unlock the meter and make the supply available to him when his vacation ended. This was solely for the benefit of plaintiff and not of the gas company. It was a service that defendant was not bound to furnish except for the convenience and benefit of plaintiff. Compensation therefor was implied; and the rate schedule filed with the Public Service Commission made this type of charge legal. In my opinion the order and judgment should be affirmed.

Adel, J., concurs.

INDIANA PUBLIC SERVICE COMMISSION

Re Lizton Telephone Company

[No. 12954.]

Return, § 111 — Telephone company.

1. An increase in telephone rates should not be allowed when the utility has received a return of 5.4 per cent on total investment after operating expenses and 4 per cent allowance for depreciation, p. 398.

Expenses, § 11 — Nonrecurring items — Cost of moving pole lines.

2. An increase in operating costs of a telephone company occasioned during one year on account of moving pole lines and equipment because of rural electrification is abnormal and nonrecurring and should not be reflected in the operating costs for the subsequent year as a basis for an increase in rates, p. 398.

[March 18, 1938.]

PETITION *for authority to increase telephone rates; denied.*

APPEARANCES: W. W. Dowden, Secretary, Treasurer, and Resident Manager, Lizton, for petitioner; none, for protestants; Herbert P. Kenney, Assistant Public Counselor, Indianapolis, for the public.

By the COMMISSION, Rinehart, Examiner: On December 2, 1937, petitioner, Lizton Telephone Company, filed its petition for authority to increase its exchange service rates, service connection, move and change charges, setting forth that due to rural electrification it has been necessary to make all lines of petitioner metallic and replace poles, wires, crossarms, and other equipment at a great cost and additional investment; that due to general increase in cost of material, labor, and operation the company cannot earn a return on the investment and it is therefore impossible to sell its stock and securities and that no provision can be made to set up a reserve for depreciation after paying taxes and other expenses.

Pursuant to notice duly given as required by law public hearing was held in the rooms of the Commission, 401 State House, Indianapolis, at 10 A.M., Wednesday, February 1, 1938, with appearances as above noted.

The evidence shows that petitioner served, during the year 1937, 143 subscribers; that 119 of these subscribers were rural-line subscribers paying a rate of $1 per month; that it also served 12 single-line town subscribers paying a rate of $1.25 per month, and 12 two-party-line town subscribers at a rate of $1.12½ per month; that petitioner proposes to make a horizontal increase of 25 cents per month affecting the rates charged to each subscriber.

The evidence also shows that petitioner is now charging the maximum service connection, move and change charge applicable to exchanges of its classification, as were established by the Commission in its order issued in Cause No. 10365 approved January 6, 1931, and that petitioner proposes to charge more for certain of these services than the maximum charges established by said order.

[1, 2] The evidence also shows that during the year 1937, due to rural electrification construction by the Rural Electric Membership Corporation, petitioner was required to move 2½ miles of its pole lines to the opposite side of the road and that the cost of moving these lines was equally divided between petitioner, the Rural Electric Membership Corporation, and the Indiana Bell Telephone Company.

The evidence also shows that the fair value of the used and useful plant and property owned by petitioner is $4,903.98; that the total revenue of petitioner, for year 1937, was $2,234.98; that the total expenses for the same period were $1,966.67 including $235.20 charged to depreciation of plant and equipment; that the difference between the total revenue received and the total operating expense, for the year 1937, is a net revenue of $268.32.

It was also shown that petitioner was incorporated in 1929 with a fixed capitalization of $5,000; that the par value of the stock issued was fixed at $1 per share and that the same is now owned by approximately forty-two stockholders, and that since the date of incorporation the company has acquired 845 shares of stock outstanding.

The Commission, after having considered the evidence and being sufficiently advised in the premises, finds that a net revenue was received for

the year 1937 representing a return of 5.4 per cent on the total investment, after the total operating expenses, including an allowance made of better than 4 per cent for the depreciation of the depreciable plant and property, was deducted from the gross revenues; that petitioner is in sound financial condition, there being no evidence of outstanding indebtedness; that, in the opinion of the Commission the increase in operating cost, occasioned during the year 1937 due to moving pole lines and equipment was abnormal and nonrecurring and should not be reflected in the operating cost for the year 1938; that the increase in rates and charges, as prayed for, is not justified, as shown by the evidence and that the prayer of the petition should be denied, and it will be so ordered.

It is therefore *ordered* by the Public Service Commission that the prayer of the petitioner herein be, and the same is, hereby denied.

It is *further ordered* that petitioner pay into the treasury of the state of Indiana, through the secretary of this Commission, the sum of $5.42, being costs of publication of legal notice of hearing in this cause.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

Edison Light & Power Company

[Complaint Docket No. 11585.]

Procedure, § 21 — Necessity of hearing — Order preserving status quo — Prohibition against payments.

The Commission has jurisdiction to issue an order, without a hearing, maintaining the status quo by prohibiting declaration and payment of dividends and payments on account of indebtedness to affiliated companies pending disposition of a proceeding to determine the necessity for such prohibition.

[April 12, 1938.]

INQUIRY *and investigation on Commission motion to determine necessity for order prohibiting declaration or payment of dividends or payment on account of indebtedness to affiliated companies; Commission jurisdiction to issue temporary order of prohibition asserted and hearing scheduled.*

By the COMMISSION: This matter is an inquiry and investigation on Commission motion to determine the necessity for an order prohibiting the

declaration or payment of any dividends or the payment of any amount on account of indebtedness to affiliated companies by Edison Light and Power Company. Pending disposition of the proceeding, declaration and payment of dividends and payment on account of indebtedness to affiliated companies has been prohibited. A bill in equity was filed in the Dauphin county court of common pleas praying for a restraining order. The court refused to grant a preliminary injunction or restraining order on the ground that the Commission order preserved the status quo, and the Commission was proceeding to hearing and determination. A hearing was scheduled and held on March 25, 1938, at which counsel for respondent raised the issue of Commission jurisdiction and requested to be heard in oral argument on that issue. The request was granted and oral argument was held on April 4, 1938.

The Public Utility Law undoubtedly gives the Commission authority to inquire into the reasonableness of interaffiliate transactions. It also confides to the Commission the protection of public utility service.

Section 1008 of the Public Utility Law (66 PS § 1398) provides as follows:

"Investigations.—The Commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this act. In conducting such investigations the Commission may proceed, either with or without a hearing, as it may deem best, but it shall make no order without affording the parties affected thereby a hearing."

In our opinion, the above-quoted section gives us full power and authority to proceed with this inquiry and investigation. Respondent raises the question of Commission jurisdiction to issue the order maintaining the status quo without affording a hearing to respondent. We think that a status quo order may be made without a prior hearing where the possibility of injury to the public interest is so great and apparent as in the instant case. The Dauphin county court by refusing to restrain the order of the Commission on the ground that it merely preserved the status quo pending a determination has impliedly approved this view.

It is our opinion that the Commission has full jurisdiction in this proceeding, and should proceed to hearing and determination as promptly as possible; therefore,

Now, to wit, April 12, 1938, it is *ordered:* That respondent's motion to dismiss be and is hereby refused.

It is *further ordered:* That hearing be scheduled in this proceeding for 10 A.M., Monday April 25, 1938, to be held in hearing room No. 1, ground floor, North Office building, Harrisburg.

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CCEPTANCE!

ineering executives purchase equipment on demonstrated performance. That can Soot Blowers are on the preferred list of engineers who buy because demonstrated lowest maintenance sound engineering and the ruggedest con- uction ever built into Soot Blowers, is evidenced by the following partial list representative contracts installed or sold in 1937.

Allis Chalmers Co. .....West Allis, Wis.	MacSim Bar Paper Co. .....Otsego, Mich.
Ames, City of .....Ames, Iowa	Mendocino State Hospital ....Mendocino, Calif.
Atlantic Refining Co. .....Atreco, Texas	Metropolitan Edison Co. .....Reading, Pa.
Baltimore Transit Co. .....Baltimore, Md.	Municipal Power Plant .....Rochester, Minn.
Bethlehem Steel Co. .....Sparrows Point, Md.	N. Y. State Electric & Gas Co....Dresden, N. Y.
Chain Belt Company .....Milwaukee, Wis.	Ohio Power Co. .....Windsor, W. Va.
Columbia Enameling & Stamping Co., Terre Haute, Ind.	Pennsylvania Electric Co. .....Sewart, Pa.
Container Corporation .....Carthage, Ind.	Ralston Purina Company.....Battle Creek, Mich.
Continental Diamond Fibre Co. ....Newark, N. J.	Republic Oil & Refining Co. ....Texas City, Texas
Crosley Radio Corporation .....Cincinnati, Ohio	Republic Steel Co. .....Thomas, Ala.
Eldora Gold Mines .....Port Hope, Ontario	Rochester & Pittsburgh Coal Co.....Lucerne, Pa.
Elgin, Joliet & Eastern R. R. Co.....Gary, Ind.	Schervier Hospital .....New York City
Formica Insulating Co. .....Cincinnati, Ohio	Sherwood Refining Co. .....Warren, Pa.
Globe Steel Tubes Co. .....Milwaukee, Wis.	Sloan Blabon Co. .....Philadelphia, Pa.
Hamilton Coke & Iron Co. .....Hamilton, Ohio	A. E. Staley Mfg. Co. .....Decatur, Ill.
Helwig Silk Dyeing Co. .....Philadelphia, Pa.	Thilmany Pulp & Paper Co. .....Kaukauna, Wis.
Hudepohl Brewing Co. .....Cincinnati, Ohio	Tide Water Power Co. .....Wilmington, N. C.
Jose Arechabala Socieda .....Cardenas, Cuba	Timken Roller Bearing Co. .....Columbus, Ohio
Kaukau Sugar Co. .....Honolulu, Hawaii	United Refining Co. .....Warren, Pa.
Kendall Refining Co. .....Bradford, Pa.	U. S. Military Academy .....West Point, N. Y.
Keystone Public Service Co. .....Oil City, Pa.	Vacuum Oil Co. .....Paulsboro, N. J.
Latonia Refining Co. .....Latonia, Ky.	Village of Hinsdale .....Hinsdale, Ill.
Lehigh Portland Cement Co. .....Oglesby, Ill.	Washington Gas Light Co.....Washington, D. C.
McAndrews & Forbes .....Camden, N. J.	Westinghouse Elec. & Mfg. Co...Mansfield, Ohio
M Street Heating Plant .....Washington, D. C.	

an Soot Blower Corporation does not down to a price. Vulcan builds into their pment thirty-three years of experience; by highly skilled engineering and plant onnel of long service, using the highest material that hard exacting service has onstrated is the most practical for its ose. The result is trouble free, long years of service, making unnecessary frequent servicing—and when service is required, skilled field engineers on their rounds, offer it gladly to maintain your Vulcan equipment in top condition. Just ask the Vulcan Sales or Field Engineer WHY Vulcan build into their equipment the most rugged, trouble free, lowest maintenance you can buy.

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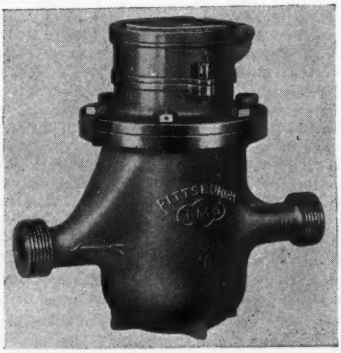
Industrial Progress

Pittsburgh Equitable Markets New Water Meter

DESCRIBED as the first practical innovation in domestic water meter design and construction to be offered the American water works trade in over 50 years, the Pittsburgh Equitable Meter Company of Pittsburgh, Pa., displayed their new IMO Meter for the first time at the American Water Works Association convention held recently in New Orleans.

The Pittsburgh IMO Meter derives its name from a portion of the firm name, the "Aktiebolaget IMO Industri" of Stockholm, Sweden,



New Meter Design Gives High Accuracy

who hold the basic patents on the IMO design. The Pittsburgh Equitable Meter Company has been assigned the sole license to manufacture and sell meters in the United States, Canada and Mexico under these patents.

The manufacturer claims the IMO is the most accurate water meter ever commercially built. Published accuracy curves show 90 per cent registration at 1/12th of a gallon per minute, while at the rate of ¼ gallon per minute the IMO is said to measure 100 per cent. From this point on out to its maximum rate of 20 gallons per minute, it shows a flat curve.

The success of the Pittsburgh IMO is said to be based on its unique measuring chamber and operating units. These consist of three screws which mesh with each other and fit the bore of a casing. These screws are called rotors while the surrounding casing is the measuring chamber. Water enters the measuring chamber from the bottom and, as it is forced upwards by line pressure, causes the rotors to turn from its path. They are said to rotate and be propelled by the surrounding medium (water) in a perfectly continuous flow. The threads on the rotors act as a continuous piston which always moves in a forward direction. The register on the Pittsburgh IMO is driven by the action of the center rotor through an oil enclosed gear train.

Bus Posters Feature Ranges

THE Public Service Corporation of New Jersey will feature the full line of gas ranges sold in their retail stores, which operate under the name of the Public Service Electric & Gas Co., in 54 in. x 24 in. poster space on the outside of their Public Service Coördinated Transport bus lines servicing Camden, Newark, Union City, Jersey City, Paterson and New Brunswick.

Barrett Andrews, national director of advertising, in coöperation with Edwin Faber, vice-president, handled this coördinated selling job for Street Railways Advertising Company, which will feature the products of the American Stove Company, Cleveland, Ohio; Cribben & Sexton Stove Co., Chicago, Ill.; Tappan Stove Company, Mansfield, Ohio; Roberts & Mander Stove Co., Philadelphia, Penn.; Hardwick Stove Company, Cleveland, Tenn.; and George D. Roper Corp., Rockford, Ill.

Orders 20 Diesel-Electrics

THE Surface Transportation Company of New York City will soon place in operation twenty 40-passenger Diesel-electric coaches to be built by the Twin Coach Co. Electrical equipment for ten of the buses will be furnished by the General Electric Company.

The order was placed after a thorough test of two Diesel-electric coaches operated on the transportation company's system since early 1937 had established excellent performance records. The buses were operated over a traffic-congested 3½ mile route between the Bronx and lower Westchester. Parked cars line both sides of the street, which is winding and has as much as seven per cent grade in some places.

I.B.M. Corp. Enlarges Plant

INTERNATIONAL Business Machines Corporation will increase the capacity of its main Endicott, N. Y., plant by the construction of a building 160 ft. x 450 ft., three floors, which will be equipped as a modern machine shop.

Thomas J. Watson, president, in mentioning the new construction as a proof of his confidence in the future, said:

"We are preparing to build this new addition in order to take care of the future demands of our business arising from the revival of industry, which I confidently believe is on its way."

P.R.R. to Spend $8,315,000

AN $8,315,000 equipment construction program by the Pennsylvania Railroad will include 1,000 gondola cars, eight special type freight cars and twenty electric passenger locomotives.

President M. W. Clement, in announcing the proposed construction, said it requires more than 1,000,000 man-hours of employment at the company's Altoona shops and additional employment at plants contributing parts for the equipment. The additional electric power is needed because of the recent completion of the electrified lines to Harrisburg.

Burnham Air & Vacuum Valves

THE new vacuum valve as introduced by the Burnham Boiler Corporation of Irvington, N. Y., eliminates entirely the disc in the cap which has been more or less troublesome with even the finest vacuum valves.

The vacuum check in this new valve is accomplished by the use of a sensitive bellows built right into the body of the valve itself. With the old type disc valve whenever any moisture happened to be logged under the disc it would stick and prevent it from venting properly.

However, in the new Burnham bellows type valve the disc has been eliminated and the

valve vents freely. When the system cools down and a vacuum is created, instead of depend ng upon a disc such as in the older type valve, the sensitive bellows is pulled down onto the float pin and prevents air from getting back into the system. This results in saving of fuel since the radiator remains warm for a longer period of time.

Furthermore, since water boils at lower temperatures under a vacuum, it takes less fuel to again produce heat in the radiator when required.

With this new valve it is now possible to convert an ordinary one-pipe steam system to a one-pipe vacuum system without the expense of changing any piping. All that is necessary is to substitute one of the new Burnham bellows type vacuum valves in place of the existing valve on each radiator.

Literature and further information may be obtained by writing direct to the Burnham Boiler Corporation, Irvington, N. Y.

Seamless Boiler Tubes Aid Efficient Operation

BOILERS are kept working efficiently and economically when equipped with hot rolled seamless boiler tubes manufactured by the Jones & Laughlin Steel Corporation, Pittsburgh, according to the manufacturer, because of the ease of installation, long life, uniformity of heat transfer, and safety of these tubes.

In the manufacture of J & L boiler tubes, a hot, thimble-shaped steel slug is forged over a steel mandrel into a seamless tube. This forging process has many advantages over other methods of making seamless tubes as it increases the density, ductility, and homogeneity of the steel in the tubes, making them strong and pliable.

These long, straight seamless tubes are free from welds, fit quickly into place, and can be expanded, flanged, and beaded in while cold without splitting or fracturing. Their high ductility eliminates the costly practice of heating or annealing the ends of the tubes to get pliability enough for beading. Furthermore, the consistent uniform wall thickness of the tubes gives a more even transfer of heat, cutting fuel costs and giving better service.

From ore to finished product, the quality of the low carbon steel used in the manufacture of boiler tubes and other J & L high pressure tubular products is under strict metallurgical control. This makes possible the manufacture of tubes that are resistant to the destructive forces of corrosion, pitting, vibration, and temperature variations, and insures increased life of the tubes and fewer number of repairs on boilers that operate production machinery.

Numerous rigid inspections in every step of the manufacturing process make certain that all J & L boiler tubes are in accordance with the A.S.M.E. Boiler Code, and comply with such other standard specifications as the A.S.T.M. specifications and the General Rules and Regulations of the United States Bureau of Navigation and Steamboat Inspection.

G-E Standards Department

TO better coördinate activities in the development and application of standards both within the company and without, General Electric has formed a new Standards Department. This organization will work with the various local, national, and international associations and agencies interested in standards and codes and will also promote the develop

ment of standards for use in the company's engineering and manufacturing department. The new department will be headed by L. F. Adams, who will serve as manager and assistant to Vice President E. O. Shreve. Associated with Mr. Adams will be E. B. Paxton, E. R. Anderson, H. W. Samson, and H. W. Robb.

The formation of the Standards Department centers in one organization the work formerly done by smaller groups throughout the various General Electric plants. At the same time, however, the several standardizing committees already established by the company will continue to function in the development and design of apparatus in their respective lines.

Phone Co. Spends $4,100,000

A $4,100,000 construction program is being undertaken by the Wisconsin Telephone Co.

The company plans to spend $2,538,000 in routine work, $338,000 on long distance lines, and $63,000 on general exchange.

Express Box Provided For "Roadking" Coupe

SPECIAL two-in-one equipment, that transforms a Plymouth Roadking Coupe into a double-duty vehicle for occasional delivery work, is announced by Plymouth Division, Chrysler Corporation.

The new conversion apparatus consists of an easily-removable pick-up box that extends the rear compartment, for the convenience of owners who have occasional light but bulky loads to carry. The pick-up box is sturdily constructed of heavy gauge steel, finished in black enamel and equipped with its own tail light and license plate bracket.

This special equipment may now be obtained at any time, either when new cars are first ordered or through authorized Plymouth dealers, for Roadking coupes already in service.

Outstanding feature of the apparatus is that the trim passenger car lines of the Roadking coupe remain unchanged when the unit is removed. Even with the pick-up box in place, it can be used without removing the rear deck lid if desired.

The new pick-up box provides more than 24½ cubic feet of carrying space with the tail gate closed. For even bulkier loads, the tail gate may be lowered on sturdy chains for additional support of longer pieces.

Pittco Caravan Promotes Better Store Lighting

ON September 1, 1937, the Pittsburgh Plate Glass Company introduced the Pittco Store Front Caravan and started it on a nation wide tour. The Caravan consists of three units—a pilot car with an advance agent, and two trucks each specially designed and built to carry six miniature store fronts, complete in every detail including lighting effects and window trim, and actually constructed of Pittco Store Front Products—Carrara Structural Glass, Extruded Pittco Metal, Polished Plate Glass and other similar products.

The purpose of the Caravan was primarily to show merchants, property owners, architects and contractors just what could be done in the way of complete store front modernization through the use of modern materials and adequate lighting. Now, after twenty-one months on the road, and with seven more to go, a report on its accomplishments is indicated.

By June 1, 1938, the Caravan had crossed the country twice. It has been from Maine to Florida, from Washington to California, from Texas to Minnesota. It has passed through floods, tornadoes, sandstorms, and blizzards—and it is still going.

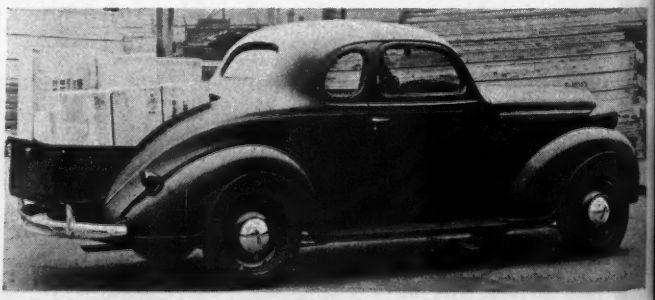
Over 190,000 people have visited the Caravan and inspected the models— with an average of 10 per cent developing into live prospects. The number of active sales made as a result of these showings cannot be accurately checked, but in many instances the models were actually reproduced in full-sized fronts.

In the 280 showings of the models, the local utilities have coöperated to the fullest extent and it is gratifying to see that such coöperative efforts have resulted in such success.

"Electric Screw Drivers"

AN 8-page illustrated booklet, "Facts about Stanley Electric Screw Drivers," has been issued by Stanley Electric Tool Division, The Stanley Works, New Britain, Conn.

This new booklet includes all the information that the title suggests. It tells where and

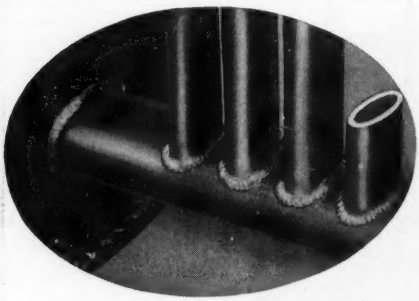


Plymouth's New Double-duty Vehicle

why Stanley electric screw drivers are used in industrial plants, describes the different types of Stanley electric screw drivers and the accessories used with them.

Uni-Row Radiators Feature Pennsylvania Transformers

SOME time ago, Pennsylvania Transformer Co. of Pittsburgh, Pa., announced the new Uni-Row radiators as standard on Pennsylvania Power Transformers, as an answer to the problem of rusting, leaking radiators. Since its introduction, this improved transformer has proved its adaptability.



Welded Tubes of Uni-Row Radiator

It is claimed for Pennsylvania's Uni-Row radiators that they are far more accessible. Each tube is readily convenient for sand-blasting, cleaning and painting in factory or field.

The Uni-Row radiators are permanently welded to the tank, eliminating the necessity for valves, flanges, gaskets and bolted connections. This permits shipment of transformers completely assembled, filled with oil, ready for immediate installation.

The exceptional ruggedness of this type of transformer is evidenced by the fact that they are subjected to a standard pressure test of one hundred pounds per square inch. This is possible because of the heavy wall, 13-gauge steel tubes and the rugged weld which only such heavy gauge metal permits.

Summer Appliance Campaign

NINE electrical appliances for household use are being intensively promoted during the summer months by the Consolidated Edison Company of New York, Inc., in conjunction with coöperating electrical dealers as a feature of the general "Your Household Electric Bill is Worth Money to You" campaign. These appliances are being offered at special low prices in addition to which the customer receives the benefit of the merchandise credit on the price of appliances allowed by dealers, based on the number of kilowatt hours used. The equipment includes "pin-it-up" lamps, a toaster, an automatic iron, a coffee maker, a rubber bladed fan, an electric shaver, a mixer and juice extractor, a table radio and a portable electric range.

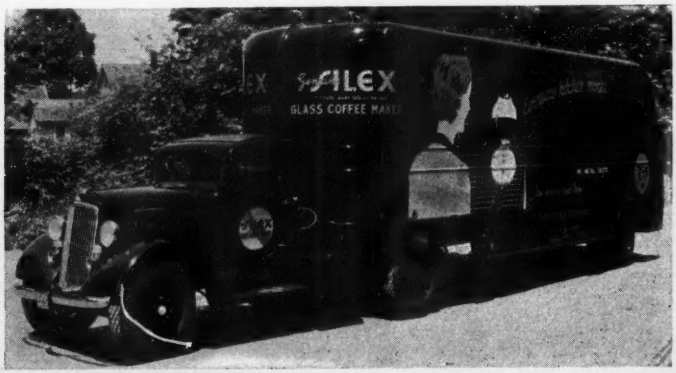
Eight manufacturers and distributors of portable air-conditioning equipment are coöperating with the Edison company in an advertising campaign featuring such equipment for offices and homes. Taking part in the plan are the Airtemp, Carrier, Delco-Frigidaire, General Electric, Kelvinator, Standard Air Conditioning, Westinghouse and York companies.

A 75,000-Mile Billboard

ADVERTISING Silex Glass Coffee Makers—the modern method of brewing better-tasting coffee—to millions of prospects, the huge, moving billboard, shown in the accompanying illustration, has travelled 75,000 miles in the last two years.

From Corning, New York, to the Silex factory in Hartford, loaded with Pyrex brand glass, guaranteed against heat breakage . . . from Boston to Hartford carrying boxes for the new Delray model . . . this trailer truck has made residents and tourists all along its lines of travel Silex-conscious.

Five-color advertising messages are painted on both sides, on the rear panel, and on the front panel.



Silex Uses Trailer Truck in Advertising Campaign

ke it from this old timer . . . when he says that

L SEAMLESS STEEL BOILER TUBES

"The best tubes we have handled in 40 years"

. Wolford of H. Wolford & Company, Philadel- has been repairing boilers for over forty years. what he says about J & L Boiler Tubes —

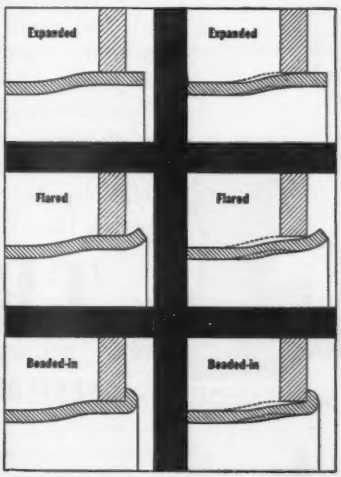
many years, we have used one make of Boiler be and thought they were best, but just a few cks ago, we placed through a Philadelphia jobber order for 192 of your 3" x 18' Seamless Steel bes and want to say that these tubes are the best staying put and turning over that we have han- d in forty years. From now on we will handle hing but J & L Tubes."

oo, will find that J & L Seamless Steel Boiler roll in faster and stay put . . . that J & L Boiler save you money on installation costs . . . and heir longer life and increased efficiency keep at work earning profits instead of losing them. e can be no failure at or near a weld with J & L ss Steel Boiler Tubes . . . because there are no They are rolled from solid billets of selected When you need boiler n a hurry, these easy work- L Tubes are no farther han your telephone. Call & L distributor. He has a te stock of sizes 1" O.D. .D. inclusive, which com- th all recognized boiler cations.

Why High Ductility is Vitally Important

(a) Jones & Laughlin Seamless Tubes with their high ductility form a smooth, tight joint and "stay put" permanently...when they are expanded, flared and beaded in. See diagrams below.

(b) Tubes not sufficiently ductile resist forming and tend to pull away from the boiler plate. Such tubes require longer time for working and leave imperfect joints. See diagrams below.



J & L manufactures a complete line of seamless and welded steel tubular products. This includes seamless pressure tubes, condenser and heat exchanger tubes.

• • •

Flange steel plates and firebox steel.

S & LAUGHLIN STEEL CORPORATION

AMERICAN IRON AND STEEL WORKS
PITTSBURGH, PENNSYLVANIA

OF HIGH QUALITY IRON AND STEEL PRODUCTS SINCE 1850

J&L—ALWAYS MAKING FINER CARBON STEEL PRODUCTS FOR NEW AND BETTER USES

The answer -is simple..

Neptune, by using modern machine tools and improved gauges, is today producing Trident Water Meters to closer tolerances, finer finish, and to standards of precision never before attained in meters making. The result is—meters of longer life, greater sensitivity, increased accuracy and perfect interchangeability, that insure greater revenue, lower maintenance, and wipe obsolescence, depreciation and loss of capital value off your books. Neptune Meter Co., 50 W. 50th St., (Rockefeller Center) New York City. Neptune Meters, Ltd., 345 Sorauren Ave., Toronto, Ont., Canada.

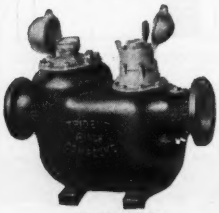
SPLIT CASE
For Frost-free installations
Sizes ⅝" to 1"

TRIDENT

PIONEERS IN METER PROGRESS

YESTERDAY - TODAY - TOMORROW

FROST PROOF
with breakable bottom
Sizes ⅝" to 1"



COMPOUND
For both large and small flows
Sizes 1½" and 2" Screw End
1½" to 10" Flange End

PROTECTUS
For Fire Service
First to be approved by Underwriters' Laboratories, Inc.
Note
clear waterway
Sizes 3" to 10"

CREST
Velocity or inferential
with turbine or pro
for high rates of fl
Sizes 1½" and 2" Scre
1½" to 16" Flange E

INDEX TO ADVERTISERS

PROFESSIONAL DIRECTORY

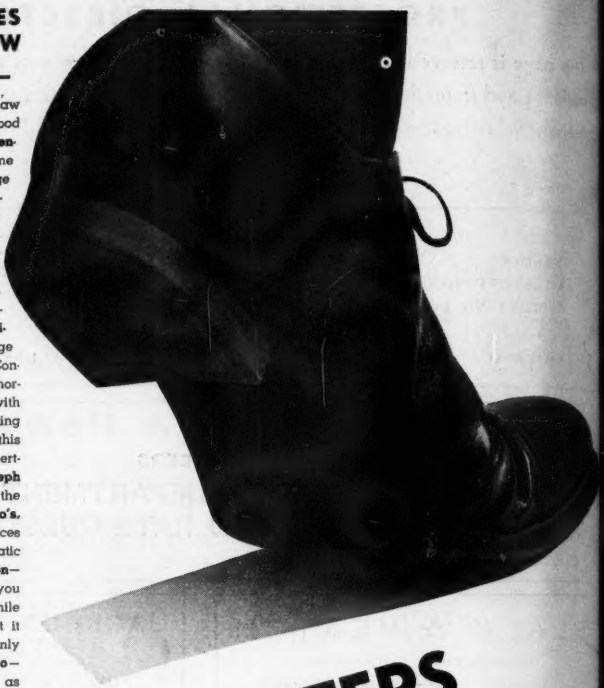
This page is reserved for engineers and engineering concerns especially equipped by experience and trained personnel to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction.

HUNDREDS OF STORES FEATURE ROBERTSHAW

Here's how some of them do it—

Abraham & Straus, N. Y.—"Robertshaw Oven-Heat-Control because it prevents food burning! No watching! No waiting!" **Central Illinois Light Co., Peoria**—"I can tune in any temperature on my new gas range with Robertshaw Automatic Heat Control." **Sibley, Lindsay & Curr, Rochester**—"As up to date as today's newspaper and the ultimate in a cook stove. It has Robertshaw heat-control." **Gimbels, Milwaukee**—"New Robertshaw Oven-Heat-Control with visual temperature indicating signal." **Netcher's Boston Store, Chicago**—"A nationally known gas range equipped with Robertshaw Oven-Heat-Control." **Snellenberg, Philadelphia**—"A thoroughly modern and efficient range with Robertshaw heat control for correct cooking temperature." **Spears, N. Y.**—"You'll put this down as a MUST—a gas range with Robertshaw Oven-Heat-Control." **Loveman, Joseph & Loeb, Birmingham**—"Of course, it has the Robertshaw Oven-Heat-Control." **Shillito's, Cincinnati**—"Equipped with all conveniences for easier cooking! Robertshaw thermostatic heat control." **Ben Duffie, Inc., Houston**—"Robertshaw Oven-Heat-Control frees you from oven watching. Cooks dinner while you're out for hours. Put cake in, forget it—take out perfectly baked cake, evenly browned." **The Music Mart, El Paso**—"Robertshaw Oven-Heat-Control, as fine as money can buy." **Titche-Goettinger Co., Dallas**—"The famous Robertshaw Oven-Heat-Control." **Thalhimers, Richmond**—"This is considered the finest Robertshaw heat control . maintains the exact heat required for any baking operation . you merely set the dial to the required temperature." **Kaufman's, Pittsburgh**—"Science says it cooks better . Robertshaw Oven-Heat-Control—for even temperature."

The above statements are extracts from newspaper advertisements



FOOTSTEPS *show the wa*

Follow the pathway of sales-wise merchandising men in important sto all over the country who play up ROBERTSHAW in their local ra advertising.

They *know* there is real value in the name. They feature it constantly prominently day after day. They've seen it help sell gas ranges!

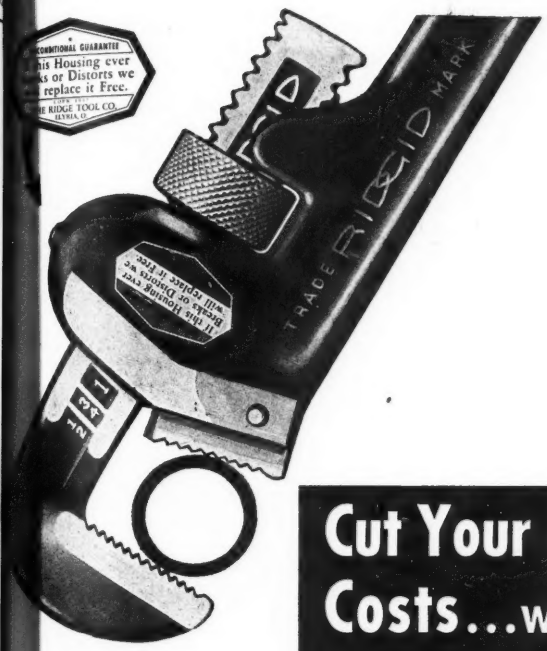
Women know ROBERTSHAW OVEN-HEAT-CONTROL from experie —from the praises of friends. That's why retail ads by the hundreds fea ROBERTSHAW.

Some of the stores which add the extra selling appeal of ROBERTSHA are listed to the left. Read what they say—then feature ROBERTSHAW your retail range advertising. Feature Robertshaw-equipped ranges your sales floor. It will pay you!

Robertshaw Thermostat Company • Youngwood, Penn

It pays to feature **ROBERTSHAW**

OVEN-HEAT-CONTRO



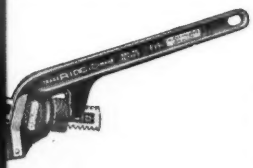
Cut Your Pipe Wrench Costs...with this Really Guaranteed RIGID

Millions of RIGID users find their wrench costs have dropped because this extraordinary wrench lasts far longer.

They find their expense for wrench repairs cut fully 75% because of that RIGID guarantee.

These savings are important these days.

The safe all-alloy RIGID does better easier work. Safe powerful chrome molybdenum jaws and handle. Adjusting nut always spins easily in all sizes, 6" to 60". Cut your tool expense—order RIGID wrenches today from your Supply House.

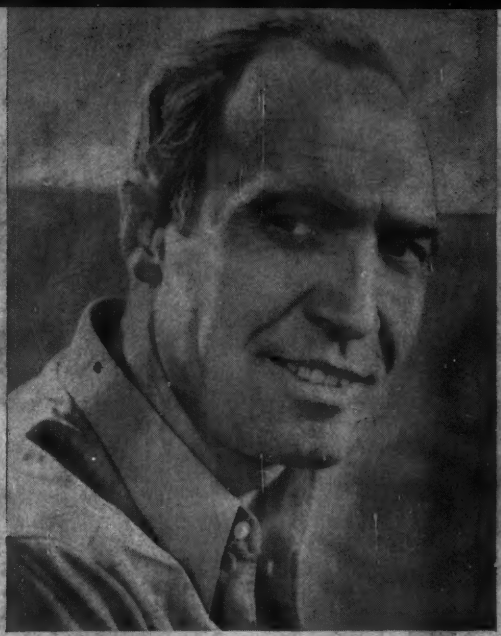


The Wrench for Pipes Against Flat Surfaces—the handy RIGID End Pattern

Grips pipes in coils, against walls or floor, in tight places—saving time and trouble. Buy from your Supply House.

THE RIDGE TOOL CO. **ELYRIA, OHIO**

RIGID PIPE TOOLS



Meet One of America's Most Popular Rural Power Salesmen

SINCE the first of the year, Bill Howard, rural power salesman, has talked to nearly a quarter of a million farm people—an average of 1600 a day. His job is to show farmers already connected to a high line that the more electricity they use, the cheaper it becomes, and the more profits it makes for them.

Bill is the ideal salesman, for he entertains as he sells. He's the hero in General Electric's new all-talking motion picture, "Bill Howard, R.F.D." In a gripping story, Bill discovers that electricity can solve his two major problems: how to get more profit from his farm, and how to make country life attractive to his son. That the picture makes warm friends for electricity is proved by hundreds of comments like—"It's better than a real movie."

Bill Howard is just one part of the complete program which General Electric has made available to power companies to help sell fuller use of electricity on the farm. The program also includes a 52-page manual on how to electrify the farm and rural home, written by a farmer for farmers, a series of sound slidefilms and booklets on Farm Wiring, Lighting, Refrigeration, Soil Heating, etc., a fascinating new publication showing how to use electric motors on the farm, and an intensive advertising campaign in state farm papers.

This year, 150,000 farms will be connected to electric service. To help them—and the 1,250,000 farm families already connected—to use their new servant intelligently and economically, is the object of this timely program. This promotion is but one of the many "extra" services that result from placing your orders with General Electric.

GENERAL ELECTRIC